

BEFORE THE  
NORTH CAROLINA UTILITIES COMMISSION

Docket No. P-772, Sub 8  
Docket No. P-913, Sub 5  
Docket No. P-989, Sub 3  
Docket No. P-824, Sub 6  
Docket No. P-1202, Sub 4

In the Matter of )  
 )  
Joint Petition NewSouth )  
Communications Corp., et. al. for )  
Arbitration with BellSouth )  
Telecommunications, Inc. )

Raleigh, North Carolina  
Thursday, December 9, 2004

Deposition of CARLOS MORILLO,

a witness herein, called for examination  
by counsel for the Joint Petitioners, in the  
above-entitled action, pursuant to Notice, the witness  
being duly sworn by Christine G. Griffin, Court  
Reporter and Notary Public in and for the State of  
North Carolina, taken at the offices of Parker Poe  
Adams & Bernstein, 150 Fayetteville Street Mall, Suite  
1400, Raleigh, North Carolina, beginning at 9:03 a.m.,  
on Thursday, December 9, 2004, such proceedings  
being taken stenographically by Christine G. Griffin.

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SIMPLIFICATIONS

Prior to examination of the witness, Counsel for the parties stipulated and agreed as follows:

1. Said deposition shall be taken for the purpose of discovery or for use as evidence in the above entitled action or for both purposes as permitted by the applicable rules of civil procedure.

2. Any objections of any party hereto as to Notice of the taking of said deposition or as to the time and place thereof or as to the competency of the person before whom the same shall be taken are hereby waived.

3. Objection to questions and motions to strike answers need not be made during the taking of this deposition, but may be made for the first time during the progress of the trial of this case, or at any pretrial hearing held before the Judge for the purpose of ruling thereon or at any other hearing of said case at which said deposition might be used, except that an objection as to the form of a question must be made at the time such question is asked or objection is waived as to the form of the question.

4. That all formalities and requirements of the Statute with respect to any formalities not herein expressly waived are hereby waived, especially including the right to move for the rejection of this deposition before trial for any irregularities in the taking of the same, either in whole or in part or for any other cause.

5. That the scaled original transcript of this deposition shall be mailed first class postage or hand-delivered to the party taking the deposition or its attorney for preservation and delivery to the Court, if and when necessary.

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PROCEEDINGS

Whereupon

CARLOS MORILLO,

having been first duly sworn, was examined and testified as follows.

EXAMINATION

BY MS. JOYCE

Q Please state your full name and your business address for the record.

A Carlos Morillo, 675 West Peachtree Street Atlanta Georgia, 30375

Q Mr. Morillo, why have you appeared here today?

A To testify on behalf of my company and to address any questions you might have on the testimony that I have filed.

(Exhibit 1 marked for identification.)

Q (By Ms. Joyce) I'm handing you a document marked Exhibit 1. Do you recognize this document?

A No, I haven't seen it. But if I saw it, it was brief.

Q Have you discussed with your -- strike that. How did you know that you were to appear here today?

2 (Pages 2 to 5)

Page 6

Page 8

1 A Attorneys -- my attorneys and other people  
2 that were planning to come here this week I read an  
3 email sent out saying that I was supposed to be here,  
4 deposited today. Thursday

5 Q And do you understand that you have been  
6 designated as the BellSouth witness on the issues for  
7 which you have filed written testimony in this  
8 arbitration?

9 A Yes I understand that

10 Q And do you understand that the testimony you  
11 give today will bind BellSouth as a company?

12 A Yes I do

13 Q And do you understand that the testimony you  
14 give today is under oath?

15 A Yes I do

16 Q And do you understand that the testimony may  
17 be admitted into a hearing in the state commission as  
18 if you were physically present?

19 A Yes I do

20 Q What, if anything, did you do to prepare to  
21 give this deposition today?

22 A I started reviewing the cases -- I mean the  
23 issues that were assigned to me I've done research  
24 I've talked to people in our company and read some  
25 excerpts of laws to make sure I understood and

1 MR CULPEPPER They are work  
2 product

3 MS JOYCE Why are they work  
4 product?

5 MR CULPEPPER In anticipation of  
6 litigation He's a witness in this particular case  
7 We're not going to produce any notes that he took

8 MS JOYCE What is the standard that  
9 you're quoting. "In anticipation of litigation"? I  
10 believe that's the attorney/client privilege standard

11 MR CULPEPPER It's a work product  
12 It's an objection He's not going to produce his  
13 notes

14 MS JOYCE On what grounds are you  
15 lodging your work product objection?

16 MR CULPEPPER Pursuant to -- well,  
17 we're here in North Carolina, so North Carolina Rules  
18 of Civil Procedure, any commission rules that are  
19 applicable, as well

20 MS JOYCE Did you assist  
21 Mr. Morillo when he wrote his notes?

22 MR CULPEPPER Did I, personally,  
23 no

24 MS JOYCE Did you, Mr. Meza?

25 MR MEZA We instructed him, and

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Page 9

1 interpreted them properly, and over the course of the  
2 last -- gosh, I don't know -- six or seven months,  
3 since May, April, I've been reviewing documents  
4 relating for this case

5 Q And was that in preparation for giving this  
6 deposition?

7 A Well, all -- in essence yes, I've been  
8 prepping, since the beginning the cases to be deposited  
9 and also for participation in the hearings

10 Q Did you take any notes when you conducted  
11 your research?

12 A I'm certain I did at times

13 MR JOYCE I'd like to make a  
14 request for Mr. Morillo to produce the notes that he  
15 took when he did his research please

16 MR CULPEPPER To produce the notes  
17 that he took in preparation for his deposition?

18 MS JOYCE Mr. Morillo are you an  
19 attorney?

20 THE WITNESS No I'm not an  
21 attorney

22 MS JOYCE Those notes are not  
23 privileged and they're not work product and they were  
24 done in preparation for this deposition We're  
25 entitled to see them

1 that makes it within the work product doctrine In  
2 addition, you can't use a deposition to ask for data  
3 request So that's another reason why your request is  
4 improper We have no obligation to produce anything  
5 that is not requested pursuant to a written discovery  
6 request

7 MS JOYCE In deposition if the  
8 witness has taken notes to prepare to give his  
9 testimony, those are --

10 MR MEZA Under what grounds?

11 MS JOYCE Under the grounds of  
12 discovery, they are relevant and they speak to the  
13 issues

14 MR MEZA I disagree I disagree,  
15 and I also disagree with your misunderstanding of the  
16 work product doctrine We're asserting that  
17 objection You can do what you need to do

18 MS JOYCE For the record, I don't  
19 believe I have misunderstood the attorney work product  
20 doctrine, but I'm sure we can both go back to our law  
21 books and read it

22 MR MEZA Sure

23 Q (By Ms. Joyce) With whom did you speak at  
24 BellSouth?

25 A When?

3 (Pages 6 to 9)

Page 10

Page 12

1 Q When you were preparing to give your  
2 testimony today  
3 A Subject matter experts in billing credit  
4 For the most part those two groups, the various  
5 people in there  
6 Q And can you identify by name any of the  
7 persons with whom you spoke?  
8 A Yeah  
9 Q And with whom did you speak?  
10 A Cindy Clark  
11 Q C-L-A-R-C-K?  
12 A Yes Jennifer Vogel  
13 Q V-O-G-E-L?  
14 A Yes Sandra Cetti C-E-T-T-I And those are  
15 the three main people I'm certain there are other  
16 folks but I just don't remember Those are my  
17 primary contacts  
18 Q Are any of these women attorneys?  
19 A No  
20 Q Did you speak with anyone else at BellSouth  
21 in preparation for this deposition?  
22 A My boss  
23 Q And who is your boss?  
24 A John Ruscilli  
25 Q Is that R-U-S --

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1 A R-U-S-C-I-L-L-I  
2 Q Do you report directly to Mr Ruscilli?  
3 A Yes  
4 Q Is there anybody else?  
5 A The folks that I directed to write my  
6 testimony  
7 Q And who were those persons?  
8 A Patti Klein and Mike Harper  
9 Q Is that P-A-T-T-Y?  
10 A No P-A-T-T-I I believe Yeah  
11 Q C-L-I-N-E?  
12 A Yes -- no actually K. K-L-E-I-N I'm sorry  
13 Q And Mike Harper?  
14 A Right  
15 Q And was there anybody else with whom you  
16 spoke?  
17 A I don't -- if I did I don't remember  
18 specifically  
19 Q Mr Morillo, have you ever been deposed  
20 before?  
21 A Yes  
22 Q How many times?  
23 A Once  
24 Q And what was the nature of the proceeding for  
25 which you were deposed?

1 A Billing dispute  
2 Q Was that with a Competitive Local Provider a  
3 CLP, C-L-P?  
4 A Yes It was in Florida, so yeah, they're  
5 called CLEC there But, yes Competitive Local  
6 Exchange Company --  
7 Q Or Carriers?  
8 A Or Carriers  
9 Q C-L-E-C And which authority or tribunal was  
10 this dispute before?  
11 A The Florida Commission  
12 Q I'm sure you're familiar with the deposition  
13 rules but I'll briefly go over them and then we can  
14 get started  
15 The court reporter can not register in the  
16 transcript a nod of the head and so I ask that you  
17 remain mindful of the need to give an audible answer  
18 A Okay  
19 Q And also, it is important that you not use  
20 "uh-huh" and "uh-uh" because it doesn't come out in  
21 any readable way in the transcript So if you could  
22 just keep that in mind  
23 And also for the court reporter's  
24 convenience, if you could please wait for me to finish  
25 my question before you answer, that will help her out

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1 greatly and make the transcript easy to read Can  
2 you --  
3 A Yes, I understand  
4 Q Thank you Are you the designated BellSouth  
5 witness for all of the nine state proceedings that  
6 make up this arbitration?  
7 A Yes, I am  
8 Q Does your testimony apply to all nine  
9 BellSouth states?  
10 A Yes  
11 (Exhibit 2 marked for  
12 identification )  
13 Q I'm handing you a document that's been marked  
14 Exhibit 2 Do you recognize this document?  
15 A Yes I do  
16 Q And what is it please?  
17 A My testimony filed in the beginning of June  
18 Q Was that June 4th of this year?  
19 A June 4th of 2004, yes  
20 Q And at the top, it indicates that it was  
21 before the North Carolina Utilities Commission Do  
22 you see that?  
23 A Yes, I do  
24 Q Why did you write this testimony?  
25 MR CULPEPPER Object to the form of

4 (Pages 10 to 13)

Page 14		Page 16	
1	the question	1	Q And did the same people review your
2	THE WITNESS Why did I object to the	2	testimony?
3	testimony?	3	A Yes
4	MS JOYCE There's one rule that I	4	(Exhibit 4 marked for
5	forgot to say If your attorney objects, you must	5	identification )
6	answer unless he instructs you not to answer	6	Q Mr Morillo I'm now handing you a document
7	Typically the objection will just be for the record	7	that's been marked as Exhibit 4 Do you recognize
8	and our colloquy will continue Do you understand?	8	this document?
9	THE WITNESS Okay I wrote the	9	A Yes
10	testimony to address those issues in the testimony	10	Q And what is it, please
11	Q (By Ms Joyce) Did anyone ask you to write	11	A My Rebuttal Testimony in the State of
12	it?	12	Tennessee, dated November 19, 2004
13	A Yes I was assigned by my boss to those	13	Q And who asked you to write this testimony?
14	issues to represent our company in this arbitration	14	A Same folks
15	Q That's Mr Ruscilli?	15	Q Mr Ruscilli, is that right?
16	A Yes	16	A Yes
17	Q Did anyone review this testimony before it	17	Q And the same persons that reviewed your
18	was filed with the North Carolina Commission?	18	June 4th and November 12th testimony reviewed this
19	A Yes	19	November 19th testimony?
20	Q Can you identify any of the persons that	20	A Yes
21	reviewed it?	21	Q To your best recollection, did the same
22	A All the folks that wrote it The other folks	22	persons review each set of testimony?
23	that I already mentioned their names, that's me	23	A Yes To my best recollection, Yes, sir --
24	Sandra Cetti, Cindy Clarke, people in their groups my	24	yes, ma'am
25	boss	25	Q What position do you now hold at BellSouth?
Page 15		Page 17	
1	Q Which group is Cindy Clarke in?	1	A I'm a director of policy implementation
2	A She's in billing	2	Q And has your position changed in the last six
3	Q Does that have a formal departmental name at	3	months?
4	BellSouth?	4	A No, not in the last six months
5	A I couldn't tell you I think it's DBI, but I	5	Q I direct your attention to your June
6	don't know what it stands for And there's Jennifer	6	testimony which is Exhibit 2 Do you see that?
7	Vogel in the same related group	7	A Yes, I do
8	Q And Ms Cetti?	8	Q And direct your attention to Page 1, lines 12
9	A She's in the credit area	9	to 13 where it states you are director of policy
10	Q Does that group have a formal name at	10	implementation and regulatory compliance Do you see
11	BellSouth?	11	that?
12	A I couldn't tell you I don't know I'm not	12	A Yes, I do
13	familiar with the name of the group	13	Q Is that a different position from director of
14	(Exhibit 3 marked for	14	policy implementation?
15	identification )	15	A No it's not It's the same
16	Q Mr Morillo I'm now handing you a document	16	Q Is there a reason that the words "and
17	that's been marked as Exhibit 3 Do you recognize	17	regulatory compliance" do not appear in Exhibit 3
18	this document?	18	which is your November 12th testimony?
19	A Yes I do	19	MR CULPEPPER Object to the form of
20	Q What is it please	20	the question
21	A This is my Supplemental Direct Testimony and	21	THE WITNESS I don't know if there
22	for the North Carolina Utilities Commission dated	22	is a reason I think it might have been a typo
23	November 12th, 2004	23	Q (By Ms Joyce) Can you describe your job
24	Q Who asked you to write this testimony?	24	duties as a director of policy implementation?
25	A Same people	25	A I'm a policy witness for the company and I

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1 direct the development of testimony on cases that I'm  
2 assigned to. I do research on the issues and I speak  
3 with various folks and accompany those people in the  
4 company to articulate those positions.  
5 Q: What kind of research do you do, Mr. Morillo?  
6 A: Just talk to them, review our written  
7 processes and policies to become familiar with them if  
8 I'm not already.  
9 Q: Is there any other kind of research that you  
10 do?  
11 A: If I have to read legal documents related to  
12 the cases, I will do that to make sure that I'm  
13 familiar with them.  
14 Q: Do you yourself go to find these legal  
15 documents?  
16 A: At times, yes.  
17 Q: Do you know how to conduct legal research?  
18 A: No, I don't.  
19 Q: Do you have any legal training?  
20 A: No, I don't.  
21 Q: Do you recall at what time you became  
22 involved in this arbitration?  
23 A: May -- the first week of May.  
24 Q: Can you please look at your Exhibit 3, which  
25 is your November 12th testimony, Page 2, line 10. Do

Page 19

1 you see that?  
2 A: Yes, I do.  
3 Q: It states that, "I assumed my current  
4 position in May of 2004."  
5 A: That's correct.  
6 Q: Is this the first arbitration you were asked  
7 to work on?  
8 A: No.  
9 Q: How many arbitrations --  
10 A: I'm sorry, arbitration, yes. This is the  
11 first one.  
12 Q: How many arbitrations are you currently  
13 working on?  
14 A: One other one.  
15 Q: Did you undergo any training to become a  
16 policy witness for BellSouth?  
17 MR. CULPEPPER: I object to the form of  
18 the question.  
19 THE WITNESS: Formal training, you mean?  
20 I don't --  
21 Q: (By Ms. Joyce) Did anyone teach you skills  
22 that taught you to become a policy witness?  
23 MR. CULPEPPER: Object to the form of the  
24 question.  
25 THE WITNESS: I read documents and, yes,

1 for half a day or so. I talked to somebody.  
2 Q: (By Ms. Joyce) Was that a person employed by  
3 BellSouth?  
4 A: Contracted by BellSouth, yeah.  
5 Q: Also on Page 2 of your November 12th  
6 testimony, at Line 7, it states that you "joined  
7 BellSouth International as a Senior Manager of IT  
8 Planning." Do you see that?  
9 A: Yes, I do.  
10 Q: What does a senior manager of IT Planning do?  
11 A: At that time, our responsibilities were to  
12 identify all systems required to launch companies  
13 overseas, BellSouth, in the early '90s and '80s,  
14 embarked in a significant development of businesses  
15 overseas, and I participated in that group. And I was  
16 responsible to identify billing systems, ordering  
17 systems, network management systems, how it would  
18 work, price them out, put them in an investment-grade  
19 business plan for our officers to improve the  
20 investments.  
21 Q: Does IT stand for information technology?  
22 A: Yes.  
23 Q: Did you work out of a particular BellSouth  
24 office when you were the senior manager of IT  
25 Planning?

Page 21

1 A: Atlanta, with extensive travels overseas.  
2 Q: To which countries did you travel?  
3 A: Israel, Germany, Spain -- where else?  
4 France, South America, every country almost.  
5 Q: How long were you senior manager of IT  
6 Planning?  
7 A: Probably for a year-and-a-half to two years.  
8 Q: At Line 7 to 8 of that page, it states that  
9 you later became Director of Business Development.  
10 A: That is correct.  
11 Q: What does a director of business development  
12 do?  
13 A: Identify countries where we wanted to  
14 participate, have participation in either companies to  
15 purchase or licenses that we can apply for at  
16 government agencies and launch a wireless operation or  
17 telecom operations in the country. So, identifying  
18 potential partners, directing the development of an  
19 investment-grade business plans and coordinating all  
20 the efforts required with all the subject matter  
21 experts from various functions.  
22 Q: Was this also with BellSouth International?  
23 A: Yes.  
24 Q: Is BellSouth International affiliated with  
25 BellSouth Telecommunications?

6 (Pages 18 to 21)

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Page 24

1 A The parent company, BellSouth Corp is the  
2 one that owned BellSouth International, so directly,  
3 no they're not There's no relationship between  
4 BellSouth International and BellSouth  
5 Telecommunications

6 Q And when you worked for BellSouth  
7 International did you work on any issues related  
8 solely to the United States?

9 A No

10 Q At Lines 8 to 9 of the same page, you state  
11 that you became Director of e-Commerce?

12 A Yes

13 Q What is the Director of e-Commerce?

14 A I was responsible for customer service,  
15 marketing ops and marketing of our Internet presence  
16 as an alternate channel for our customers to be  
17 served So I had responsibility for centers --  
18 customer service centers I had responsibility for  
19 operations related to the Website in terms of how it  
20 received bills, paid bills, order services as well as  
21 marketing those services at that channel to our  
22 customers Those were the three main  
23 responsibilities

24 Q If I use the term "retail customer," do you  
25 know what that means?

Page 23

1 A I believe so, yes

2 Q Did you deal with retail customers in terms  
3 of e-Commerce?

4 A Yes

5 Q If I use the term "wholesale customers," do  
6 you know what that means?

7 A Yes

8 Q And did you work with wholesale customers in  
9 terms of e-Commerce?

10 A No

11 Q Were the customers with whom you dealt  
12 businesses?

13 A Actually, let me clarify The Website that  
14 we developed also was utilized indirectly for the  
15 wholesale channel We worked closely with the  
16 wholesale channel to develop a Website that most CLPs  
17 in North Carolina go to for finding guys to -- that  
18 are probably irrelevant to ordering and things like  
19 that So we did work but the intent of my work was  
20 primarily retail customers

21 Q Do you know the URL of the Website that you  
22 developed?

23 A BellSouth -- www.bellsouth.com is what we  
24 were responsible for and the traffic that landed there  
25 had to be distributed to the various groups in our

1 company

2 Q And how did the Website relate indirectly to  
3 wholesale?

4 A That was one way of entry for a wholesale  
5 customer that potentially didn't know what the Website  
6 was that they should go to to retrieve documents --  
7 they can go through that And also the scope and  
8 architecture of the Website was similar in nature, so  
9 we participated in various meetings to design the  
10 Website so it would be user friendly and for customers  
11 to be able to interface endlessly between them

12 Q So you developed the interfaces?

13 A I directed the development of the interfaces  
14 That was part of my responsibility yes

15 Q One last thing on Page 2 Lines 9 to 10 it  
16 states that in 2002, you became Director of  
17 International Audit is that right?

18 A That's correct

19 Q And what did you do as Director of  
20 International Audit?

21 A I relaunched the international -- I mean the  
22 internal functions of our companies in Latin America,  
23 so I had frequent discussions with general managers  
24 and the president of International, BellSouth  
25 International, to restructure the groups the

Page 25

1 processes that they were supposed to undertake, how  
2 they were supposed to undertake them and the standards  
3 they were supposed to follow Manage the staff in  
4 those ten countries remotely, and also manage some of  
5 the projects that were sourced from headquarters

6 Q Was any of your work related solely to the  
7 United States?

8 A No, my work was entirely related only to the  
9 international properties

10 Q And you held that position for roughly two  
11 years?

12 A Yes

13 Q Please turn back to Page 1 of this exhibit?

14 A (Witness complies)

15 Q Lines 20 to 21 states that in 1984 you  
16 graduated from West Virginia University with a  
17 Bachelor of Science degree in economics and geology

18 A Yes

19 Q Did you have two majors?

20 A Yes

21 Q Did you have any -- I see it On 21 to 22,  
22 you have a master's in business administration?

23 A That's correct

24 Q And it states you have a concentration in  
25 economics and finance

7 (Pages 22 to 25)

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Page 28

1 A Yes  
2 Q What does it mean to have a concentration in  
3 economics?  
4 A To take I believe, more than three or four  
5 courses in a subject and to develop a little bit more  
6 in-depth knowledge of those subjects as part of  
7 electives that you take as an MBA student  
8 Q And what does it mean to have a concentration  
9 in finance?  
10 A The same  
11 Q More than three or four courses?  
12 A Three or four, yes I don't remember  
13 specifically how many there were  
14 Q And either as an undergraduate or a graduate  
15 student did you take classes in computer programming?  
16 A Yes I did  
17 Q Approximately how many?  
18 A Three four  
19 Q Do you consider yourself to be proficient in  
20 computer programming?  
21 MR CULPEPPER Object to the form of  
22 the question  
23 THE WITNESS No, I don't  
24 Q (By Ms Joyce) What role, if any have you  
25 played in the negotiations between the parties in this

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1 arbitration?  
2 A I believe I participated in one meeting in  
3 Atlanta  
4 Q Do you know, roughly, the date of that  
5 meeting?  
6 A Gosh no That's when I met Mr Heitmann  
7 In July, maybe, August I don't remember when it was  
8 Approximately  
9 Q To your knowledge was this called a summit  
10 meeting?  
11 A I believe so yes One of many summit  
12 meetings  
13 Q Did you participate in the entire meeting?  
14 A I believe there were two or three days of  
15 meetings and I only went to one  
16 Q Is it fair to say you attended the meeting  
17 that regarded the issues on which you provided  
18 testimony?  
19 A Actually, no My issues were not discussed  
20 during that day I believe there were other issues  
21 that required more dialogue than mine and that's why I  
22 decided not to come the second day  
23 Q Do you know -- do you recall the issues that  
24 were discussed at the meeting that you attended?  
25 A Gosh vaguely I think there was --

1 collocation was one that was spent a lot of time on  
2 that morning And I don't remember how -- or if it  
3 went into the afternoon  
4 Q Do you recall any other issues?  
5 A No, just that topic in general  
6 Q And Mr Morillo when you were developing the  
7 Websites that we spoke about a few minutes ago --  
8 A Right  
9 Q -- the interfaces you stated that you  
10 attended some meetings  
11 A Right  
12 Q Which group or groups were involved in those  
13 meetings?  
14 A The technology group that actually developed  
15 the Website I was more of a participating member of  
16 the user group -- the more functional group, if you  
17 will Our group -- obviously the wholesale group  
18 participated in it Those were the three major groups  
19 that I remember Each group had subsets people that  
20 participated in meetings that involved interfaces  
21 Q Is there a group at BellSouth that deals with  
22 issues related to interconnecting with CLECs?  
23 A I believe, yes The wholesale group  
24 Q Is there any particular division of the  
25 wholesale group that does interconnection issues, to

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1 your knowledge?  
2 A No, not to my knowledge  
3 Q Do you recall who from the wholesale group  
4 attended the meetings at which you derived how to  
5 develop these Websites?  
6 A I don't remember the person's name  
7 Q Please look again at Exhibit 2 -- excuse me,  
8 Exhibit 3, your June -- your November testimony  
9 A Okay  
10 Q And turn to Page 3 At the bottom of the  
11 page Line 23 you begin, "Because I am not an  
12 attorney, I am not offering a legal opinion on these  
13 issues "  
14 What do you mean by that statement?  
15 A Just what it says I am not an attorney, so  
16 any legal opinion, I leave it to our attorneys to do a  
17 brief And to the extent that I read any portions of  
18 any laws or any rules, I read it on my own and my  
19 interpretation is as a business policy witness  
20 Q On Page 4 Line 1, you state, "I respond to  
21 these issues purely from a policy perspective "  
22 Do you see that?  
23 A That's correct  
24 Q What, in your understanding, is a policy  
25 perspective?

8 (Pages 26 to 29)



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1 A Policies are best practices that a company  
2 develops over time or an industry as a whole. So  
3 companies, regardless of their size, small or large,  
4 normally have best practices that they adopt from an  
5 industry in general or they develop themselves to  
6 better manage their business.

7 Q Is it fair to say that a policy perspective  
8 is a perspective on best practices?

9 A Best practices and business experience, yes.

10 Q What is the difference in your  
11 understanding, between a legal opinion and a policy  
12 perspective?

13 MR CULPEPPER Object to the form of  
14 a question.

15 THE WITNESS I believe I already  
16 stated what a policy perspective is. I'm assuming  
17 that the legal opinion is somebody that has the  
18 ability to read and interpret legal documents, is  
19 trained like you guys do and form an opinion versus a  
20 business policy decision which is based on best  
21 practices that you develop over time in your company  
22 or adopt as an industry standard.

23 Q (By Ms. Joyce) When you've conducted  
24 research in connection with your duties as a policy  
25 witness, have you ever read any decisions of a court

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1 of law?

2 A Court of law? I don't know. I don't know if  
3 I have. I've read decisions of commissions. I've  
4 read decisions of the FCC. I've read sections of the  
5 TRO, so I'm not certain if that would qualify as what  
6 you're saying.

7 Q Is the TRO the Tribunal Review Order?

8 A Yes, that's correct.

9 Q Are you familiar with a case that's named  
10 United States Telecom Association vs. FCC?

11 A Probably not by that name. If I've read  
12 something, I don't remember the title.

13 Q If I call that case USTA II, which is  
14 U-S-T-A Roman numeral two -- would you recognize that  
15 name?

16 A I recognize the name. I'm not certain that  
17 I've read that particular document.

18 Q Are you familiar with the case that's named  
19 AT&T vs. FCC?

20 A No.

21 Q Have you read any Supreme Court opinions  
22 related to telecommunications law?

23 MR CULPEPPER United States Supreme  
24 Court?

25 Q (By Ms. Joyce) United States Supreme Court

1 A Not to my best recollection.

2 Q Which orders from a state commission --  
3 strike that.

4 How many orders of state commissions have  
5 you read?

6 A A handful. I'm not certain how many I've  
7 read in the past six to seven months that I've been in  
8 this job -- 5, 10, 15. It varies in preparation for  
9 this case and other cases that I'm assigned to.

10 Q Did -- in any of those orders that you read  
11 did the state commission reach a decision?

12 A Yes.

13 Q Were these state commissions in the BellSouth  
14 region?

15 A Yes.

16 Q In any of these orders that you read, did the  
17 commissions tell BellSouth to do something?

18 MR CULPEPPER Object to the form of  
19 the question.

20 THE WITNESS Yes, they ordered  
21 BellSouth to do something.

22 Q (By Ms. Joyce) Would you consider that  
23 result to be a policy perspective?

24 MR CULPEPPER Object to the form of  
25 the question.

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1 THE WITNESS In the cases that I've  
2 read, they were policy related -- a BellSouth policy.

3 Q (By Ms. Joyce) And when the state commission  
4 reached a decision, did you consider that to be a  
5 policy perspective?

6 MR CULPEPPER Object to the form of the  
7 question.

8 THE WITNESS I believe I answered that  
9 but, yes, I believe the ones that I remember reading,  
10 they were policy issues that the state commission  
11 ordered us to do something.

12 Q (By Ms. Joyce) To your understanding, did  
13 that order bind BellSouth to do something?

14 A We are a law-abiding company, so if the order  
15 -- if the state commission ordered us to do something,  
16 unless we appealed it, then, yes, we are bound by  
17 those decisions.

18 Q Do you consider those decisions to be law?

19 MR CULPEPPER Object to the form of  
20 the question.

21 THE WITNESS I don't fully  
22 understand your interpretation of "law." They're  
23 orders by a commission and I'm not certain how the  
24 commissions come about in this state, whether they're  
25 -- I'm assuming that there's some law that establishes

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Page 36

1 the commission Therefore, the commission has certain  
2 parameters to order things from, in our case  
3 utilities

4 So I'm not sure if there are laws that  
5 they promulgate as much as an order that they're  
6 entitled or allowed to, based on their objective set  
7 by state legislature

8 Q You say that BellSouth is a law-abiding  
9 company?

10 A Yes

11 Q And BellSouth intends to abide by commission  
12 decisions?

13 A We normally do

14 Q Please turn to Page 4 -- you might be there  
15 already -- of your November 12th testimony

16 A Yes

17 Q At lines 10 to 11 --

18 A Right

19 Q -- you state that "BellSouth's obligations  
20 under Section 251 of the 1996 Act are to provide  
21 service in standard intervals at cost-based prices "

22 Do you see that?

23 A Yes I do

24 Q On what do you base that conclusion?

25 A My interpretation of having read Section 251

1 Quality Measurements and Self Effectuating Enforcement  
2 Mechanism Plan, SEEMs plans Between the two, they  
3 stipulated the intervals that were supposed to be  
4 standard intervals of providing service -- installment  
5 services in the states

6 Q And do you base your statement at Lines 10 to  
7 11 here on your experience with those state commission  
8 proceedings regarding standard intervals?

9 MR CULPEPPER I object to the form  
10 of the question

11 THE WITNESS I base my statement on  
12 Lines 10-11 on having read the 1996 Act and then  
13 following through to see how that section was  
14 implemented in that state And in the case of North  
15 Carolina, I believe those proceedings occurred in the  
16 2001 year period I think it was 2001

17 And, again during those times I believe  
18 all the CLPs in the state of North Carolina  
19 participated in the proceedings and were able to  
20 intervene and provide input to the state commission to  
21 what was non-discriminatory, just and reasonable  
22 intervals to provide them service which is the  
23 stipulation in the Act It talks about  
24 non-discriminatory and just and reasonable terms and  
25 conditions

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Page 37

1 and not being able to find anything that said that we  
2 were supposed to, by law, provide any service as an  
3 expedite service -- in an expedite manner, I should  
4 say

5 Q Is your testimony that this conclusion rests  
6 on the fact that you didn't find anything in  
7 Section 251 to that effect?

8 MR CULPEPPER Object to the form of the  
9 question

10 THE WITNESS Yes I did not see  
11 anything in that Section nor code a federal -- I  
12 can't remember the title but the codes that follow the  
13 law that mention that we have to do that What I did  
14 find, though, is references to the state commissions  
15 needing to sit down with all the participants in the  
16 marketplace and define what the standard intervals  
17 were which I believe we did across all the nine  
18 states, including the state of North Carolina And  
19 those were the intervals to which we were, by law,  
20 supposed to provide services to CLPs and CLECs in all  
21 those states

22 Q Did any of the state commissions impose  
23 standard intervals as a result of those proceedings?

24 A I believe there was -- in the State of North  
25 Carolina, there were proceedings to define Service

1 Q Which part of the Act says that?

2 A I believe 251 I don't remember  
3 specifically

4 Q Is there any document I could show you to  
5 reflect -- refresh your recollection?

6 A If you have Section 251 of the Act  
7 (Exhibit 5 marked for  
8 identification )

9 Q (By Ms Joyce) I'm handing you a document  
10 that's been marked Exhibit 5 Do you recognize this  
11 document?

12 A Yes, I recognize this

13 Q And what is it?

14 A It is Section 251 of the Act I guess Yes  
15 And it's related to interconnection That's the title  
16 of the section

17 Q Does this document refresh your recollection  
18 as to what part of the 251 -- Section 251 regards to  
19 non-discriminatory practices?

20 A Yes

21 Q Can you show me where in this document the  
22 reference is?

23 A Interconnection, which I think is your second  
24 page, 316, Sections C and D D specifically refers to  
25 interconnection on terms -- on rates, terms and

10 (Pages 34 to 37)

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1 conditions that are just, reasonable, and  
2 non-discriminatory, and that's what I was referencing  
3 earlier  
4 Q Is this a statute that you're reading?  
5 A It's part of the Act  
6 Q Which Act?  
7 A The 1996 Telecom Act I believe if that's  
8 what you're showing me  
9 Q Was this an Act passed by the Congress of the  
10 United States?  
11 A I believe so, yes the Act of 1996  
12 Q Were the state commissions that held  
13 proceedings about standard intervals relying in any  
14 way on Section 251 of the Act when they performed that  
15 duty?  
16 MR CULPEPPER I'm going to object  
17 to the form of the question  
18 THE WITNESS That would be a  
19 speculation on my part, but I assume that they were  
20 implementing the spirit of the Act and therefore  
21 they had the proceedings that they had  
22 Q (By Ms Joyce) Was there any other Act that  
23 they relied on to your knowledge  
24 MR CULPEPPER Object to the form of  
25 the question

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1 THE WITNESS No, I don't know I  
2 don't know  
3 Q (By Ms Joyce) You don't know I direct  
4 your attention to Lines 12 through 14 of Page 4  
5 A Okay  
6 Q It states that, "BellSouth -- because  
7 BellSouth is not required to provide expedited service  
8 pursuant to the 1996 Act, the Petitioners' request is  
9 not appropriate for a Section 251 arbitration "  
10 Do you see that?  
11 A Yes I do  
12 Q What do you mean by that statement?  
13 A That since we're not by law, required to  
14 provide service in an expedited manner, that this  
15 particular issue should not be arbitrated It's not  
16 -- it doesn't fall under 251 obligation  
17 Q At Lines 14 to 15, you go on to say, "It  
18 should not, therefore be included in the Agreement "  
19 Do you see that?  
20 A Yes I do  
21 (Exhibit 6 marked for  
22 identification )  
23 Q Mr Morillo, I'm passing you a document that  
24 is labeled Deposition Exhibit 6  
25 A Okay

1 Q Do you recognize this document?  
2 A It says Attachment 6, so I assume it's  
3 Attachment 6 of the current interconnection agreement  
4 I don't see anyone else's name so I'm assuming it's a  
5 generic one  
6 MS JOYCE Mr Culpepper, I'm not  
7 sure what is the best procedural way to do this but I  
8 have an email that can indicate that I represent that  
9 this is the version of Attachment 6 --  
10 MR CULPEPPER The latest version?  
11 MS JOYCE -- that BellSouth sent to  
12 our office And I can enter that as an exhibit here  
13 MR CULPEPPER That's fine We ---  
14 MS JOYCE I just want you to be  
15 sure that --  
16 MR CULPEPPER That this is the  
17 latest version of Attachment 6?  
18 MS JOYCE To the agreement being  
19 negotiated, yes  
20 MR CULPEPPER To the agreement  
21 being negotiated Not the current agreement, but the  
22 agreement we are currently arbitrating  
23 MS JOYCE Yes, yes  
24 MR CULPEPPER Do you have any idea  
25 of the date of the email

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1 MS JOYCE I do We can put it in  
2 as an exhibit or I'll just show it to you This has  
3 been redacted because there's some communication  
4 between me and another attorney But if you look on  
5 the second page, I believe it begins with an email  
6 from Mr Meza saying attached are --  
7 MR CULPEPPER Yeah, that's fine  
8 MS JOYCE So, I think the date  
9 was --  
10 MR CULPEPPER November 22nd?  
11 MS JOYCE -- November 22nd  
12 Q Have you read Attachment 6 to the agreement  
13 being negotiated --  
14 A Um  
15 Q I'm sorry, let me just finish my question  
16 Have you read Attachment 6 to the negotiated agreement  
17 in any form?  
18 A I have read excerpts of the Attachment  
19 Q Are you familiar with the format of the  
20 agreement in terms of how they're typed up?  
21 A Yes  
22 Q I direct your attention to Page 9 of this  
23 Attachment  
24 A Okay  
25 Q At the bottom of the page left-hand side are

11 (Pages 38 to 41)

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1 the numbers 2 6 5 Do you see that?  
2 A Yes I do  
3 Q Do you understand that that represents that  
4 the text that appears here is for Section 2 6 5 of  
5 Attachment 6?  
6 A Yes  
7 Q And would you agree that this is the section  
8 of the agreement that is at issue in Issue 6-5 of your  
9 testimony, depicted on Page 4 of your November 12th  
10 testimony?  
11 A Yes  
12 Q Please read this section and tell me whether  
13 the parties have agreed that BellSouth will perform  
14 service date advancements on behalf of the  
15 Petitioners?  
16 A "Service Date Advancement Charges For  
17 Service Date Advancement requests by the customer  
18 Service Date Advancement charges will apply for  
19 intervals less than the standard intervals as outlined  
20 in Section 8 of the LOH, located at our Website The  
21 charges shall be as set forth in Exhibit A of  
22 Attachment 2 of this Agreement, and will apply only  
23 where Service Date Advancement has been specifically  
24 requested by the requesting party, and the element or  
25 service provided by the other party meets all

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1 technical specifications and is provisioned to meet  
2 those technical specifications  
3 Q Mr Morillo, I'll stop you there I'm sorry  
4 I meant for you to read it to yourself Thank you for  
5 being accommodating Can you tell me whether this  
6 section indicates that the parties have agreed that  
7 BellSouth will perform service date advancements on  
8 behalf of Petitioners?  
9 MR CULPEPPER I object to the form  
10 of the question  
11 THE WITNESS First, this is  
12 something I believe is being arbitrated So, I guess,  
13 it's on paper It hasn't been fully decided yet In  
14 the case of the statement, there is an offer in terms  
15 of BellSouth to provide service date advancements  
16 outlined in certain Websites So yes, this is an  
17 offer for BellSouth to provide service date  
18 advancement  
19 Q (By Ms Joyce) Given your familiarity with  
20 the format in which this agreement is being typed up  
21 and provided, do you know what it signifies when  
22 language is in bold?  
23 A I believe it's being discussed or negotiated  
24 Here, I don't see anything in bold in this case  
25 Q Does that indicate to you that this language

Page 44

1 is not being negotiated?  
2 A I guess it is being negotiated because we're  
3 discussing it now as part of the arbitration, so we  
4 haven't reached an agreement yet  
5 Q Is it your position that whether BellSouth  
6 will perform service date advancements has not been  
7 resolved by the parties?  
8 A Reading this document it seems like there's  
9 an agreement on the fact that that's an offer that  
10 we'll make to the CLPs to provide service date  
11 advancement  
12 Q Do you know whether the CLPs accepted that  
13 offer?  
14 MR CULPEPPER Object to the form of  
15 the question  
16 THE WITNESS I would assume that the  
17 CLPs -- yes, accepted the offer to have this included  
18 in the agreement I haven't participated in this  
19 negotiations of this, so I'm not sure what agreement,  
20 if any, was reached Based on what we just defined,  
21 that if it's not bold, then it's something that has to  
22 be agreed upon I would have to say that the document  
23 that I have indicates that this service date  
24 advancement is something that both parties have agreed  
25 to with those terms, with references to those

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1 exhibits I'm assuming, for charges Those charges  
2 are set forth in Exhibit A  
3 Q On Page 4 of your testimony, lines 16 to  
4 17 --  
5 A Yes  
6 Q -- you state that it -- and "it" refers to  
7 BellSouth, is that right?  
8 A Yes  
9 Q "It should not be penalized for doing so by  
10 having TELRIC rates apply to a function that is not  
11 even contemplated by the Act "  
12 Do you see that?  
13 A Yes I see that  
14 Q And what did you mean that BellSouth should  
15 not be penalized?  
16 A I believe the CLPs have requested that this  
17 service be provided at TELRIC rates, and I'm  
18 disagreeing with that decision because I don't think  
19 it's something that the Act requires for us to  
20 provide It's something that we are providing --  
21 accommodating certain CLPs and customers of ours to be  
22 able to expedite service requests So if we -- in  
23 this case, we're talking about BellSouth providing  
24 this -- or at least your proposal was that BellSouth  
25 should be providing TELRIC rates, and I disagree with

12 (Pages 42 to 45)

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1 that  
2 Q And TELRIC, just for the record is  
3 T-E-L-R-I-C. Total Element Long Run Incremental Cost  
4 Is that your understanding?  
5 A Yes  
6 Q Are TELRIC rates a penalty?  
7 MR CULPEPPER Object to the form of  
8 the question  
9 THE WITNESS I'm not certain what  
10 you mean by a penalty  
11 Q (By Ms Joyce) Well, you used the word  
12 "penalized" in your testimony  
13 A It's not a commercially-agreed rate and  
14 according to my interpretation of the Act there are  
15 certain services we have to provide at that rate And  
16 we don't have any obligation to provide these services  
17 at that rate We have rates to provide those services  
18 to other people and to other services, but we don't  
19 use TELRIC rates to provide the service  
20 Q Why did you use the word "penalize" at Line  
21 16?  
22 A Because if we're ordered to do that, it would  
23 be a penalty that we would have to impose TELRIC  
24 rates are lower than we -- are lower rates  
25 Q Lower rates than what?

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1 A What I believe is in reference to charges --  
2 the charges you will find -- and let me go back to the  
3 section of the agreement At Exhibit A, Attachment 2,  
4 I believe the TELRIC rates are lower than ours  
5 Q Are lower rates a penalty?  
6 MR CULPEPPER Object to the form of  
7 the question  
8 THE WITNESS In this case, it is my  
9 interpretation that yes, it will be a penalty to  
10 provide these services  
11 Q (By Ms Joyce) Are you familiar with how  
12 TELRIC rates are derived?  
13 A Not really I mean conceptually, I  
14 understand but I don't really know the intricate  
15 details about how they're calculated  
16 Q To your understanding are TELRIC rates  
17 cost-based rates?  
18 A Yes  
19 Q Are cost-based rates provided anywhere in the  
20 1996 Act?  
21 MR CULPEPPER Object to the form of  
22 the question  
23 THE WITNESS There are references  
24 here to that term and I can't remember where it is  
25 I think there's -- it might be on the other section

1 where it discusses how prices should be arrived at for  
2 things that we should be obligated under the Act to  
3 provide  
4 Q (By Ms Joyce) What other section are you  
5 referring to?  
6 A I'm trying to remember if 251 is the one  
7 that's related to this And I believe there's a  
8 reference here Yes On the same section that I read  
9 to you a few minutes ago, 251(2)(d), the last part  
10 says, "on rates, terms and conditions that are just  
11 reasonable and nondiscriminatory in accordance with  
12 the terms and conditions of the agreement and the  
13 requirements of this section 252 of this title "  
14 And I believe that's where there's a  
15 description of what TELRIC is -- a very conceptual  
16 description of what TELRIC is My understanding is  
17 subsequent to the Act, there's more -- I guess the  
18 term might be proceedings or discussions to determine  
19 what TELRIC really was and how to calculate TELRIC  
20 I'm not familiar -- intimately familiar with that  
21 Q Do you know who sets TELRIC rates?  
22 MR CULPEPPER Object to the form of  
23 the question  
24 THE WITNESS I believe if I'm not  
25 mistaken, it's something that the states, just like

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1 state commissions will determine  
2 Q (By Ms Joyce) At the bottom of Page 4 --  
3 A Yes  
4 Q -- Lines 25 to 26, you state that, "These are  
5 the same charges that BellSouth's retail customers are  
6 charged when a retail customer requests service in  
7 less than the standard interval "  
8 Do you see that?  
9 A Yes, I see that  
10 Q And by "the same charges," are you referring  
11 to the BellSouth FCC tariff mentioned above?  
12 A Yes, I am  
13 Q Do you know whether FCC Tariff No 1 applies  
14 to BellSouth's retail customers?  
15 A Yes, it applies to retail customers  
16 Q When a petitioner purchases something from  
17 BellSouth under an interconnection agreement are they  
18 a retail customer of BellSouth?  
19 MR CULPEPPER Object to the form of  
20 the question  
21 THE WITNESS I believe they're a  
22 wholesale customer of BellSouth  
23 Q (By Ms Joyce) Does FCC Tariff No 1 apply to  
24 wholesale customers of BellSouth?  
25 A In this case, we're applying what's in FCC

13 (Pages 46 to 49)

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1 Tariff No. 1 as a charge for something that we are  
2 trying to accommodate to CLPs with, so it's an  
3 analogous charge because the CLPs are asking to have  
4 service expedited in their interconnection agreements

5 So since we're not obligated to provide  
6 services in an expedited manner and we're trying to  
7 accommodate the CLPs by providing that level of  
8 service which is an additional level of service, we're  
9 using the retail charges as a surrogate for the cost  
10 and the charges because it involves the same types of  
11 tasks and the same complexities to be able to advance  
12 the installation of the service

13 Q Do you know whether any state commission has  
14 set a TELRIC rate for service date advancements?

15 A I'm not aware of one

16 Q Do you know if any party has requested that a  
17 state commission set such a rate?

18 A I don't believe so. No, I don't believe so

19 Q Has BellSouth negotiated with a CLEC a rate  
20 for service date advancements that is not an FCC  
21 Tariff No. 1?

22 MR CULPEPPER Object to the form of  
23 the question

24 THE WITNESS I wouldn't know

25 Q (By Ms. Joyce) You stated that you have not

1 surrogate in that context?

2 A It is an analogous service -- the closest  
3 analogous service to what we provide under obligations  
4 of the Act

5 Q Do you know what a network element is?

6 A Yeah. They're pieces of our network that  
7 we're obligated to unbundle and provide to CLPs in an  
8 unbundled manner

9 Q Could this \$200 per day charge apply to a  
10 network element?

11 A I believe that's our offer, that \$200 per  
12 circuit per day would be the applicable rate for  
13 service advancements in the case of services that we  
14 provide to the CLPs

15 Q Are the rates in FCC Tariff No. 1 set under  
16 TELRIC?

17 A I believe they're commercial rates

18 Q Does the FCC review the rates in FCC Tariff  
19 No. 1?

20 MR CULPEPPER Object to the form of  
21 the question

22 THE WITNESS I would assume they  
23 have reviewed it, yes

24 Q (By Ms. Joyce) Do you know whether there are  
25 any standards that the rates in FCC Tariff No. 1 must

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1 participated in negotiations as to the issues for  
2 which you've provided testimony, is that right?

3 A Not in the Summits that the groups have now  
4 besides that only one day in Atlanta

5 Q You didn't participate in any negotiation  
6 conference calls?

7 A Not to my recollection, no

8 Q Did you assist in any way the BellSouth's  
9 personnel that conducted negotiations on the issues of  
10 your testimony?

11 A Yes. I believe we -- I discussed my issues  
12 with -- who was it that attended the summit that asked  
13 me? I know a number of employees that attended one of  
14 the Summits that asked me about my issues. In case  
15 they were going to be discussed. I don't remember  
16 Maybe -- it was probably my colleague Kathy Blake  
17 but somebody else maybe

18 Q Do you know what the rates are that BellSouth  
19 has proposed for service date advancements in  
20 Section 2.6.5 of Attachment 6?

21 A I believe that the offer on the table is \$200  
22 per circuit per day. I may be mistaken, but I believe  
23 that was the offer, which is what our FCC Tariff No. 1  
24 is

25 Q And what, to your understanding, is a

1 comply with?

2 A I'm not aware. I'm not -- I don't know  
3 whether there are standards

4 Q This issue is about petitioners placing  
5 orders with BellSouth, is that your understanding?

6 A In an expedited manner, yes

7 Q Does BellSouth control the systems in which  
8 these orders are placed?

9 MR CULPEPPER Object to the form of  
10 the question

11 THE WITNESS We are the ones that  
12 have the systems with the orders -- into which the  
13 orders are placed, yes

14 Q (By Ms. Joyce) And is it BellSouth that  
15 would fill an order that a petitioner placed on the  
16 system?

17 A We would fulfill it and provision the order  
18 yes

19 Q Is BellSouth generally in control as to when  
20 those orders will get filled?

21 MR CULPEPPER Object to the form of  
22 the question

23 THE WITNESS I have to say that if  
24 we're fulfilling the request, yes, we're in general  
25 control, but in close coordination to the CLPs. In

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1 this case -- in this particular case expedited  
2 services are not automatically fulfilled. You place a  
3 request for an expedited service and BellSouth will  
4 review it and then provide a potential date for the  
5 expedited service to be installed. So, we are in  
6 constant communication with the CLP to let them know  
7 whether or not we're able, physically -- humanly able  
8 to provide the services expedited rate. So there's a  
9 lot of communication with BellSouth and the CLPs to  
10 determine what will be the expedited date.

11 Q Is it possible that a CLEC request to  
12 expedite is not fulfilled?

13 A I would have to agree, yes, that's it's  
14 possible that we won't be able to fulfill it at the  
15 interval requested.

16 Q Why would BellSouth not be humanly able to  
17 fulfill a service date advancement request?

18 A Workload priorities. We under the Act and  
19 based on the plans that were discussed earlier, the  
20 SQM and SEEMs penalties plan, we must provide service  
21 at standard intervals so, if we have lots of orders in  
22 a certain area -- geographic area or city or  
23 municipality, that we have already made a commitment  
24 to and we don't deliver under the standard intervals  
25 we would face penalties that we would have to pay to

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1 the states

2 So, therefore, the coordination with the  
3 CLPs is crucial for them to understand that something  
4 is doable or not doable by the date requested. So it  
5 requires a lot of coordination and that's why those  
6 two plans, the SQM and SEEMs plans, with the help of  
7 the state commissions and all of the CLPs who  
8 participated in the finishing of the plans were  
9 defined to make sure that those intervals were  
10 agreeable.

11 Q In your answer, you used the word  
12 "priorities." What did you mean by that?

13 A People that install the services have work  
14 tasks that they have to complete in any one particular  
15 day as normal management of their task.

16 Q And they prioritize their tasks?

17 A Potentially based on commitments that we made  
18 to our customers, yes.

19 Q Are the SEEMs standards a factor in that  
20 prioritization of tasks?

21 MR. CULPEPPER, Object to the form of  
22 the question.

23 THE WITNESS, SEEMs -- it really --  
24 the SEEMs is a planned mechanism for penalties. The  
25 SQMs are the actual plans that define the -- they help

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1 define intervals as well, so I'm assuming so, yes.

2 Q (By Ms. Joyce) Is BellSouth presently  
3 receiving service date advancement requests from  
4 CLECs?

5 A I believe so, yes.

6 Q Do you have any understanding as to the  
7 proportion of the CLEC's orders for which a service  
8 date advancement is requested?

9 A No, I don't.

10 Q Do you have any understanding as to the  
11 proportion of service date advancement requests that  
12 are not fulfilled?

13 A No, I don't.

14 Q At Page 5 of your November 12th testimony,  
15 you state at Lines 10 to 11 "if there were no charge  
16 or only a minor charge for expedited service requests  
17 it is likely that most CLP orders would be expedited."

18 Do you see that?

19 A Yes, I see that.

20 Q What did you mean by that statement?

21 A That if there was no charge or a very  
22 insignificant charge to expedite the service request,  
23 most people would potentially request expedited  
24 services.

25 Q I direct your attention back to Exhibit 6

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1 It's Attachment 6. Do you have that?

2 A Yes.

3 Q And turn again to Page 9 of that exhibit --

4 A Okay.

5 Q -- which, if you recall at the bottom,  
6 records Section 2.6.5 of the Agreement.

7 A Yes.

8 Q Please review this section yourself and tell  
9 me if, in your understanding, this language that  
10 BellSouth proposed would require it to fulfill every  
11 service date advancement request under this Agreement?

12 A Can you restate the question for me?

13 Q What in this language gives you an  
14 understanding that BellSouth would be required to  
15 fulfill every service date advancement requested under  
16 this Agreement?

17 MR. CULPEPPER, I'm going to object  
18 to this question. I think it mischaracterizes his  
19 testimony.

20 MS. JOYCE, I'm not characterizing  
21 any of your testimony.

22 MR. CULPEPPER, You just said "What  
23 in this language supports that BellSouth would be --"

24 Q (By Ms. Joyce) I'll rephrase.

25 What, if anything, in this language leads

15 (Pages 54 to 57)

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Page 60

1 you to believe that BellSouth would be required to  
2 fulfill every service date advancement that a  
3 petitioner places under this Agreement?  
4 A Fulfill all the ones -- it will fulfill the  
5 ones that fall within those two days, the plant test  
6 dates and where we definitely base on our analysis  
7 and essentially confirm that this was possible. So, I  
8 believe that if we can confirm that this was possible,  
9 then we would commit and the CLPs would pay charges as  
10 described in Page 10 the second or third line. If  
11 those dates were -- "plant test date normal recurring  
12 charges will apply from the date but service date  
13 advancement charges will only apply if previously  
14 requested the order to be expedited. The expedited  
15 date is the same as the plant test date." So, those  
16 are the conditions that will need to be met for the  
17 expedited service and charge to be applied on the  
18 customer's invoice.  
19 Q Does your read of that language indicate to  
20 you that BellSouth can refuse or otherwise not fulfill  
21 a service date advancement request?  
22 A As I mentioned before, once a CLP requests a  
23 service expedite, BellSouth will evaluate whether or  
24 not the expedited is reasonable and can be done, and  
25 this language talks about once that's completed then

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1 the charges that will appear in Exhibit A, which I  
2 believe are the FCC charges, will apply to the  
3 delivery of that service in an expedited manner.  
4 Q I'll phrase this as a yes or no question, and  
5 you tell me if you can give me a yes or no answer.  
6 Does this language require BellSouth to fulfill every  
7 service date advancement placed by a petitioner under  
8 this agreement?  
9 A No.  
10 Q Your answer --  
11 A In this case, there's -- on the bottom of  
12 Page 9, "Where Service Date Advancements has been  
13 specifically requested by the requesting Party, and  
14 the element of service provided by the other Party  
15 meets all technical specifications and is provisioned  
16 to meet those technical specifications."  
17 So, I assume by reading this that if  
18 either one of those two conditions are not met, right,  
19 that service expedite charges would be an exception.  
20 Q Would be --  
21 A An exception. The charges will be set forth  
22 in the agreement and will apply only when all these  
23 conditions are met. So, if either one of the parties  
24 does not meet the technical specifications and is not  
25 provisioned to meet the technical specifications, then

1 reading that sentence would mean that the charges  
2 would not apply under those conditions.  
3 Q Under that language, would BellSouth fulfill  
4 the service date advancement request?  
5 A The -- what I just read? I'm sorry.  
6 Q Right.  
7 A I think the intent here of this language is  
8 We will make an offer to expedite the services. One,  
9 the offer's potential will be something we will  
10 coordinate and provide the CLPs information on when  
11 the actual date of expedited service installation will  
12 occur, and specific on this language then the service  
13 that's requested and the element of service requested  
14 by the parties must meet technical specs, and should  
15 be provisioned to meet those technical specs.  
16 I would assume that our company will do  
17 all to meet those technical specs and deliver the  
18 service as an expedited manner that is agreed upon by  
19 the CLPs and BellSouth on that date. That's what I  
20 read from this text.  
21 So the intent, yes, it is to provide  
22 services in an expedited manner, however, those  
23 conditions must be met for us to be able to -- for the  
24 charges to apply.  
25 Q Under the language that you've read, is

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1 BellSouth required to fulfill the request for service  
2 date advancement?  
3 And I phrase this as a yes or no question  
4 so that we can move on, and "I don't know" is an  
5 unacceptable answer because --  
6 A I don't know because I really don't  
7 understand what you're asking me. I mean, I read this  
8 and I told you that the charges will apply if the  
9 technical specs are met on both sides and that the  
10 advancement-requesting party agree with a date that we  
11 provide them. We'll make all effort to provide that  
12 service if all that stuff is met. So, in that case,  
13 yes, we will deliver the goods on the date that's  
14 requested. Notwithstanding that we're still -- this  
15 is something that is not an obligation for us to do.  
16 It is in your interconnection realm. There is no  
17 lawful obligation for us to provide expedited service  
18 to the CLPs so this is a good-faith accommodating  
19 clause in the Agreement to provide the service to you  
20 and the CLPs.  
21 Q What would be a lawful obligation?  
22 A I think we spent a few minutes earlier on  
23 discussing 251 interpretation, what are terms or  
24 conditions, and what are standard intervals. These  
25 are not standard intervals. These are intervals that

16 (Pages 58 to 61)



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1 are advanced, by definition. This is an extra service  
2 that we provide to our customers. There is no  
3 obligation under law to provide that type of service  
4 There's an obligation under law to provide service in  
5 standard intervals, but not in an expedited way.

6 Q When you use the term "lawful obligation," did  
7 you mean in compliance with the law?

8 A I'm not an attorney, so to me as a layperson  
9 that seems to be the same thing unless there's some  
10 catch that I don't -- yes, we comply with the law.

11 Q Do you believe that the likelihood of CLECs  
12 requesting service date advancements has anything to  
13 do with this price charged for the service date  
14 advancement?

15 MR CULPEPPER: Object to the form of  
16 the question.

17 THE WITNESS: I would assume that is  
18 a variable that they consider. I'm not certain that  
19 it is the only variable that they consider, but I'm  
20 assuming that plays -- as a business person, I would  
21 say that yes, I would consider the cost of doing  
22 something before I did it. So as a general business  
23 policy, that would be rational behavior on the part of  
24 a company, to look at the cost of a product before you  
25 purchase it.

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1 Q Would a rational company choose to purchase  
2 something if it had more than a minor charge  
3 associated with it?

4 A It depends on the value that they'd put on  
5 the product. And I'd be speculating if a CLP really  
6 wants to develop -- I mean, deploy certain services or  
7 package services to a potential customer and the value  
8 that they're going to generate from having a long  
9 relationship in business with that customer is  
10 significant over a period of months and years, it  
11 might be justifiable at that point in time to pay the  
12 expedited services.

13 Q Do you know whether the Petitioners have  
14 offered to pay a rate for service date advancements  
15 that is less than what appears in FCC Tariff No. 1?

16 A I'm personally unaware. I'm assuming, based  
17 on the fact that we're discussing it, that they  
18 requested a different rate, but I don't know what the  
19 rate is.

20 Q The rate that they proposed?

21 A Right. I don't know.

22 Q Do you know whether they did propose a rate?

23 A I don't know.

24 MR CULPEPPER: The joint  
25 petitioners?

1 MS JOYCE: Yes, the joint  
2 petitioners.

3 Q (By Ms. Joyce) Please turn to Exhibit 4  
4 which I believe is your November 19th testimony to  
5 the Tennessee Authority; do you have that?

6 A Tennessee Authority. Yes, I do.

7 Q Please turn to Page 4.

8 A Okay.

9 Q And at Lines 7 to 8, you state that "Such  
10 rates reflect the value of the expedited service being  
11 provided."

12 Do you see that?

13 A Yes, I see that.

14 Q Does the phrase "such rates" refer to the  
15 rates in FCC Tariff No. 1?

16 A Yes.

17 Q What did you mean by, "reflect the value of  
18 the expedited service being provided"?

19 A Just that. It's something that you want  
20 faster. There must be a reason why a company or  
21 business or an individual would want this service to  
22 be installed faster, and that's a value to that  
23 customer.

24 In the case of us, it requires more steps  
25 and coordination to be able to deliver something that

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1 we agree on a date with a customer, that we're going  
2 to deliver those services. So, there's value and  
3 there's extra cost on our side to be able to deliver  
4 that service. And so, as good corporate citizens,  
5 we're going to try to do as much as we can for our  
6 customers.

7 Q And by the words "expedited service," did you  
8 mean the process of expediting an order?

9 A Right.

10 Q Did you mean the telecommunications service  
11 being provided pursuant to an order?

12 A Yes. In this case, yes, I guess, if -- I  
13 stand corrected. Yes, that's the value pursuant to  
14 the order.

15 Q So the rate in FCC Tariff No. 1 for service  
16 date advancement, which I believe you testified is  
17 \$200 per circuit per day, reflects the value of service  
18 being provided?

19 A Yes.

20 Q And who decides what is the value of the  
21 service being provided?

22 A I guess it's a combination of us and our  
23 company and the customer deriving value from that  
24 expedited service installation.

25 Q At Page --

17 (Pages 62 to 65)

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1 (Mr. Meza is pouring water for the  
2 witness )  
3 THE WITNESS Thank you. It helps my  
4 throat. Thank you. I'll have to go to a doctor when  
5 I get home.  
6 MS JOYCE Did you say you were  
7 feeling ill today?  
8 THE WITNESS No. I've had this cold  
9 whatever I've had, for three weeks and I haven't been  
10 able to shake it. I think it's beyond a cold. I'm  
11 just waiting because the doctors normally tell you --  
12 MR. CULPEPPER We're on the record.  
13 You've got to be cognizant of that.  
14 MR. MEZA Off the record.  
15 (Short recess had off the record from  
16 10:29 a.m. to 10:35 a.m.)  
17 Q (By Ms. Joyce) Mr. Morillo, I'm going to  
18 phrase this as a yes or no question.  
19 A Okay.  
20 Q Is there any physical condition that impedes  
21 you from giving your best testimony today?  
22 A No.  
23 Q I refer you again to your November 12th  
24 testimony, which I believe has been marked as  
25 Exhibit 3. Page 5 of that testimony.

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1 A Okay.  
2 Q And I believe we've gone over that you state  
3 that, "If there were no charge or only a minor charge  
4 for expedited service requests, it is likely that  
5 most CLP orders would be expedited."  
6 Do you see that?  
7 A Can you --  
8 Q Lines 10 to 11.  
9 A Okay. Sorry. Yes.  
10 Q Has BellSouth conducted any analyses as to  
11 the effect that price has on the likelihood that a CLP  
12 would request a service date advancement?  
13 A I don't know.  
14 Q Have you conducted any such studies?  
15 A No.  
16 Q And now please turn to Exhibit 4, which is  
17 your November 19th testimony, at Page 4.  
18 A Okay.  
19 Q And I direct your attention to Lines 21 to 23  
20 where it states, "BellSouth's position on this issue  
21 is reasonable and provides parity of service between  
22 how BellSouth treats CLECs and how it treats its own  
23 retail customers."  
24 Do you see that?  
25 A Yes. I see that.

1 Q What do you mean by that statement?  
2 A Just what it says, that this is a  
3 nondiscriminatory way to treat our wholesale company  
4 -- our wholesale customers and retail. We're treating  
5 them equal. That's what I imply by parity. They're  
6 equally treated in terms of service expedites.  
7 Q And in this sentence, is a CLEC a wholesale  
8 customer?  
9 A Yes.  
10 Q Why does BellSouth believe that it should  
11 treat a wholesale customer the way it treats its own  
12 retail customers?  
13 A In this particular issue of service expedite,  
14 it's the right thing to do. It's a nondiscriminatory  
15 way to treat our customers. We want to provide our  
16 customers the same level of service.  
17 Q Is there any other reason other than it's the  
18 right thing to do?  
19 A From a business perspective, I would want to  
20 do that, to treat my customers the same in the case of  
21 our expediting a service, to be able to provide them  
22 the same level and quality of service.  
23 Q Do you know whether the 1996 Act requires  
24 BellSouth to act in this manner?  
25 MR. CULPEPPER Object to the form of

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1 the question.  
2 THE WITNESS I don't know, and as I  
3 mentioned earlier today, this particular service  
4 offering of service expedites is something that we are  
5 doing to really accommodate a request to provide  
6 services above and beyond what our obligations are.  
7 Q Why did you choose to use the word "parity"  
8 at Page 4, Line 22 of your testimony?  
9 A I guess I could have used equal. It was just  
10 a term that I chose. Equal treatment --  
11 nondiscriminatory treatment between those two groups  
12 of folks for the purposes of service expedites.  
13 Q Did you perform research on Issue 6-5 in this  
14 arbitration?  
15 A I spoke --  
16 Q You agree that Issue 6-5 is the testimony at  
17 this page?  
18 A Right.  
19 Q Thank you.  
20 A I spoke with the folks in that area to  
21 understand intervals, what the standard intervals  
22 were, what the request actually meant to them, to be  
23 able to provision those at an expedited manner. So,  
24 yes, if you consider that research, I researched the  
25 issue.

18 (Pages 66 to 69)

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1 Q And who in your statement are the folks in  
2 this area?  
3 A The people that work in the centers that  
4 actually expedite the services for our customers  
5 Q Do those centers have a formal name?  
6 A Gosh I'm certain that they do I don't know  
7 what they are  
8 Q But there are centers that deal with CLP  
9 orders, is that right?  
10 A Yes  
11 Q Did you read any documents as part of your  
12 research?  
13 A The Tariff -- the FCC Tariffs, the -- I  
14 believe the information that you might have requested  
15 on your production of documents that were -- not only  
16 the FCC Tariffs but other Tariffs specific to the  
17 states They talk about the charges for a residential  
18 consumer, small business consumer, large business and  
19 this one The process guidelines, which I believe  
20 appear on the Website that we made references to  
21 earlier today of the intervals Those are the things  
22 I can recall right now  
23 Q To your recollection, did the word "parity"  
24 appear in any of those documents?  
25 A No, I don't remember whether it did or not

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1 Q Did you participate in BellSouth's answering  
2 of discovery questions in this arbitration?  
3 A No  
4 Q Have you seen any of the responses that  
5 BellSouth gave?  
6 A Yes  
7 Q Have you seen the responses that apply to  
8 Issue 6-5?  
9 A I am certain I have, yes at one time or  
10 another  
11 (Exhibit 7 marked for  
12 identification )  
13 Q (By Ms Joyce) I'm handing you a document  
14 that has been marked Exhibit 7 Do you recognize the  
15 first page of this document?  
16 A Yes I do  
17 Q And what is it?  
18 A It's Joint Petitioners' 1st Set of  
19 Interrogatories, dated April 6 2003  
20 Q Is this a BellSouth response to  
21 interrogatories?  
22 A Yes  
23 Q For the record, I will state that this  
24 exhibit is comprised of different parts of responses  
25 It's not a sequentially paginated document

1 I direct your attention to the fourth  
2 page I believe, of this exhibit It does not have a  
3 number on the bottom The top right-hand corner says  
4 Item No 6-5-2 Do you see that?  
5 A Yes Page 1 of 1?  
6 Q Yes  
7 A I think I have the same -- yes  
8 Q Have you seen this page?  
9 A Yes I probably read this, yes  
10 Q And you see here on the page that it  
11 indicates a request which states, "Please identify and  
12 state the amount of all costs that BellSouth incurs to  
13 perform a service date advancement (or "service  
14 expedite") Include a BellSouth cost study and cost  
15 study information compiled in accordance with FCC  
16 TELRIC rules "  
17 Do you see that?  
18 A Yes I see that  
19 Q In the second paragraph of the text in the  
20 Response, it states, "BellSouth's Service Date  
21 Advancement (or "service expedite") charge is an  
22 alternative to direct interconnection and a market  
23 based service "  
24 What does that mean to you?  
25 A That it's market based which to me, means

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1 that they're commercial rates that would be charged  
2 for this service  
3 Q How would those rates be derived?  
4 A Commercially  
5 Q Would they be negotiated between parties?  
6 A Potentially  
7 Q Would they be in a tariff?  
8 A Yes, the FCC Tariff No I would be a  
9 commercially derived rate  
10 Q And that response goes on to say "The  
11 Service Date Advancement rate was developed as a  
12 market based additive "  
13 Do you see that?  
14 A Yes, I see that  
15 Q And what does that mean?  
16 A That it is a charge that's market based for  
17 the advancement of the service, so the charge should  
18 be reflecting the fact that you're doing something  
19 extra in this market base  
20 Q What does the word "additive" mean in that  
21 line?  
22 A Well the English term would be -- imply that  
23 it's in addition, something extra And in the case of  
24 services expedite it's an extra service It's an  
25 extra effort So the market based additive for the

19 (Pages 70 to 73)

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1 extra effort is -- that's what it says  
2 Q So the rate represents something extra, is  
3 that your testimony?  
4 A Yes the whole premise of expedite services  
5 is an extra effort on our part that we're not  
6 obligated by law to provide. It's something extra  
7 that we're providing with reasonable, rational  
8 expectations where we'd like to get paid for those and  
9 that's normal. It's a business expectation.  
10 Q And that answer goes on to say that, "There  
11 is no TELRIC cost study for this service."  
12 Do you see that?  
13 A Yes I see that.  
14 Q Do you know why there's no TELRIC cost  
15 studies for this service?  
16 MR CULPEPPER I'm going to object  
17 to the form of the question.  
18 THE WITNESS It's not an obligation  
19 that we have under the law so therefore, we don't  
20 need to do a cost study -- a TELRIC cost study.  
21 Q (By Ms. Joyce) Do you know whether any cost  
22 study has been performed in connection with this  
23 service date advancement rate?  
24 A I assume that there could have been. I don't  
25 know of any specific one. I'm not aware of one.

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1 Q Have you ever asked anybody at BellSouth  
2 whether such a cost study exists?  
3 A I probably did because, I guess, my mind  
4 works that way. As a business person, my mind works  
5 that way and I probably asked, yeah.  
6 Q And you don't recall what their answer was?  
7 A Uh-uh.  
8 Q Mr. Morillo, what is your background in  
9 issues regarding billing?  
10 A Billing experience in my prior employer, my  
11 current employer. I participated in and managed  
12 operations in billing centers. And as part of my  
13 BellSouth experience, part of the e-Commerce was also  
14 interfaced with billing entities to be able to accept  
15 payments online for services rendered to our  
16 customers. So I understand conceptually, the  
17 processes involved to do that.  
18 Q Did you develop the systems that allowed  
19 BellSouth to accept payments online?  
20 A I directed the development to that system and  
21 enhancements to that system.  
22 (Brief pause in proceedings)  
23 MS JOYCE Let's go back on the  
24 record.  
25 Q Mr. Morillo, what, if anything, is your

1 background in billing disputes  
2 A I -- I've participated in billing disputes  
3 proceedings.  
4 Q Were these proceeding before a state  
5 commission?  
6 A Yes.  
7 Q How many such proceedings?  
8 A One so far that went to a hearing.  
9 Q Did you testify at the hearing?  
10 A Yes.  
11 Q Was this the proceeding at the SLPLC in  
12 Florida?  
13 A Yes the Florida Commission. Yes.  
14 Q Were there any other proceedings?  
15 A Yes but they didn't go to hearing.  
16 Q And these proceedings involved billing  
17 disputes?  
18 A Yes.  
19 Q Did any of them involve billing disputes with  
20 a CLEC?  
21 A Yes.  
22 Q How many of them?  
23 A All of them.  
24 Q Can you approximate the number of proceedings  
25 for me?

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1 A Two, three.  
2 Q Did you participate as a policy witness for  
3 BellSouth?  
4 A Yes.  
5 Q And is that since you've assumed your current  
6 job in May of this year?  
7 A Yes.  
8 MS JOYCE Let's go off the record  
9 (Short recess had off the record).  
10 Q (By Ms. Joyce) Mr. Morillo may I direct your  
11 attention to Exhibit 3 which is your November 12  
12 testimony. Do you have that?  
13 A Yes.  
14 Q Page 6.  
15 A Okay.  
16 Q Lines 2 to 4 state, "The Petitioners' issue  
17 statement refers only to back-billing."  
18 Do you see that?  
19 A Exhibit 3, Page 6, Lines 2 to 4?  
20 Q Is that your November 12th --  
21 A Yes I see it. I'm sorry. Yes. Line 2 "The  
22 Petitioners' issue --" yes I see that.  
23 Q What does "back-billing" mean?  
24 A The ability to bill for services that were  
25 not provided in a prior bill but that were provided

20 (Pages 74 to 77)

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1 to a customer in a timely fashion So the ability to  
2 go back and bill for the services that did not get on  
3 the original bill time frame

4 Q Okay Let me see if I understand what you  
5 mean That there would be --

6 A Services rendered in a current month that I  
7 wasn't able to get on the current month's bill but  
8 potentially I get it on the next month's bill for the  
9 current month

10 Q Does back-billing refer to only the next  
11 month's bill that it could appear on?

12 A It could be more than a month

13 Q Do you know how long it could be?

14 A It could be months It could be years  
15 (Exhibit 8 marked for  
16 identification )

17 Q I'm handing you a document that's labeled  
18 Exhibit 8 Do you recognize this document?

19 A I have probably seen it, yes

20 Q Can you tell me what it is?

21 A Testimony of the Joint Petitioners for the  
22 state of North Carolina, dated December 3rd of 2004

23 Q And I'll state for the record that this is  
24 not a complete copy of the testimony

25 Mr Morillo, do you see on the next page

1 Q Do you know --

2 A BellSouth's position is that we should be  
3 allowed to bill -- in this case, back-bill or  
4 under-bill in terms of disputes to the statute of  
5 limitations of the state or any other rule that exists  
6 in the state regarding back-billing So that's our  
7 policy position that we should be allowed to do that

8 Q Is BellSouth willing to comply with any state  
9 commission law regarding back-billing?

10 A We have in the past When it's been ordered,  
11 we've complied with state-commissioned orders

12 Q Is BellSouth willing to do anything with  
13 respect to back-billing that's not in the  
14 state-commissioned ordered

15 MR CULPEPPER Object to the form of  
16 the question

17 THE WITNESS If you mean that  
18 BellSouth would negotiate something different than the  
19 statute of limitation I believe so, yes

20 Q (By Ms Joyce) What do you mean by the term  
21 "statute of limitations"?

22 A To my knowledge, most of the states in which  
23 we operate have statutes of limitations that would not  
24 allow you to back-bill or bill for services rendered  
25 beyond a certain point in time, ranging from two years

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1 it indicates that this is testimony for the  
2 Petitioners' Issue 7-1'

3 A Yes

4 Q And this is the issue about back-billing?

5 A Yes

6 Q I draw your attention to Lines 11 through 13  
7 on this page, which is labeled 105 on the bottom

8 A Okay

9 Q Do you understand that the text here  
10 articulates Petitioners' position on Issue 7-1'?

11 A I understand the sentence, yes

12 Q And generally -- the text on this page after  
13 Line 5 -- do you understand this represents  
14 Petitioners' position on Issue 7-1'?

15 A I understand that that's what I'm reading,  
16 the Petitioners' position on this issue, yes

17 Q Again at Lines 11 to 13 states "Services  
18 that are rendered more than one (1) billing period  
19 prior to the bill date should be invalid unless the  
20 Party identifies such billing as 'backbilling' on a  
21 line-item basis "

22 Do you see that?

23 A I see that, yes

24 Q Does BellSouth agree with this position?

25 A I don't believe so

1 to six years in the state that we operate in And, in  
2 addition, some states also have rules beyond the  
3 limitation that stipulates certain conditions and how  
4 to address certain conditions as far as billing, and,  
5 therefore we will comply with those

6 Q Is it BellSouth's position that the position  
7 of Petitioners represented in Lines 11 to 13 does not  
8 comply with state rules?

9 (Telephone connection lost )

10 MS JOYCE Off the record

11 (Short recess had off the record from  
12 11 05 a m to 11 07 a m )

13 MS JOYCE Let's go back on the  
14 record Could you read my last question back?

15 (Last question read back )

16 MR CULPEPPER I'll object to the  
17 form of the question

18 THE WITNESS Let me read it one more  
19 time but (Witness reviewing document )

20 I'm not familiar with the -- any potential  
21 rules in the -- or the rules or statutes that  
22 specifically request that back-billing be itemized as  
23 such in a bill, so I don't know whether that's  
24 allowed

25 Q (By Ms Joyce) I direct your attention to

21 (Pages 78 to 81)

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1 your November 12th testimony, which is Exhibit 3  
2 Again at Page 6 Lines 5 to 6 state. "All billing  
3 issues should be subject to the same time  
4 limitations "  
5 Do you see that?  
6 A Yes  
7 Q What did you mean by "all billing issues"?  
8 A In this reference, I believe that whether  
9 under-billing, over-billing, any kind of billing  
10 issues should adhere to the same kind of time  
11 limitations  
12 Q Why do you take that position?  
13 A Because it's a fair, reasonable position to  
14 take to have the same time limitations for all billing  
15 types of issues, whether under-billing or  
16 over-billing And if, in this particular instance,  
17 also -- although, part of the testimony hasn't  
18 explicitly mentioned the statutes and the states and  
19 applicable commission rules  
20 Q What do you mean by the term "under-billing"?  
21 A When somebody doesn't or isn't able to  
22 provide in an invoice or a bill all the services  
23 rendered in that period of time that the bill covers  
24 So it's analogous with back-billing the ability to do  
25 that

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1 Q Is it the same thing as back-billing?  
2 A Yes In this case, yes Under-billing means  
3 that I wasn't able -- our company wasn't able to  
4 provide you all the charges that were applicable to  
5 that period of time, so the ability to back-bill for  
6 their services is what we're discussing in this issue.  
7 I believe  
8 Q In your testimony that you've provided for  
9 Issue 7-I would under-billing be a synonym for  
10 back-billing?  
11 A Yes  
12 Q Why would a party not be able to bill the  
13 full amount due?  
14 A Various strenuous reasons In the cases of  
15 our telecom services we have information that does  
16 not arrive to us on time for us to put it in the  
17 bills There could be government mandates that  
18 require us to develop or enhance our applications and  
19 billing systems to be able to provide and recover for  
20 those services that we render Those are two  
21 instances as examples of why we would be under-billing  
22 a customer  
23 To be more specific in the case of  
24 telecom companies in our region there's some transit  
25 traffic that has to be -- we have to wait for transit

1 traffic to arrive and they're not necessarily timely  
2 sometimes It could be 60 90 or plus days before we  
3 get that traffic And normally we have agreements  
4 that we will collect those charges through these bills  
5 for the CLECs -- or CLPs, I'm sorry That's an  
6 example So it requires a little more time to get  
7 all the charges of services provided on the bill  
8 Q Is one reason that under-billing occurs is  
9 that a party doesn't know all of the charges that is  
10 entitled to impose at that time?  
11 A I think that's what I just mentioned Unless  
12 I didn't know the charges -- the transit traffic  
13 charges Therefore when I receive them I will  
14 collect them from the CLPs, in this case, to follow  
15 the example  
16 Q Can you think of an example that doesn't  
17 involve transit traffic as to why a Party would  
18 under-bill?  
19 A Yes I can't remember the exact dates, but  
20 when we were ordered by maybe the FCC -- I can't  
21 remember how the order started -- that we had to  
22 provide daily usage files to the CLEC It took us a  
23 little while to get our enhancements and we notified  
24 all the CLPs that the enhancement were going to be  
25 taking a little while But in the meantime to

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1 facilitate their being compensated by their end-users  
2 we provided them those records but we never charged  
3 them for provision of those records that they needed  
4 to collect from their end-users  
5 So, it took a little while longer than a  
6 couple months -- maybe months or a year or so until we  
7 were able to do that but there was some notification  
8 letters sent to the CLPs and they were all aware  
9 Billings -- back-billings are normally  
10 exceptions They are not the rule We don't  
11 back-bill all of our services all the time  
12 Q Do you know what a U-N-E or UNE is?  
13 A A Universal Network Element  
14 Q Does BellSouth ever back-bill for charges  
15 associated with a UNE?  
16 A I believe the example I just gave you that  
17 the DUF records in the DUF files were one such  
18 example  
19 Q Is a DUF file a UNE?  
20 A I don't know I don't remember to tell you  
21 the truth whether it's classified as a UNE but it's  
22 a service -- it's the files and records that we  
23 provide to the CLPs?  
24 Q Is there any other UNE that you can think of  
25 that could be back-billed?

22 (Pages 82 to 85)

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1 A I don't know  
2 Q At Page 6 of this testimony, at lines 11 to  
3 12, you state that, "Due to the complexity of  
4 BellSouth's billing systems 90 days is not a  
5 sufficient amount of time "  
6 Do you see that?  
7 A Yes I see that  
8 Q And what do you mean by that statement?  
9 A The way we generate our bills requires a  
10 compilation of information from at least two different  
11 billing systems  
12 Q Does BellSouth own those two billing systems?  
13 A Yes  
14 Q Did BellSouth create those two billing  
15 systems?  
16 A Over a period of time yes  
17 Q Does BellSouth ever make adjustments from  
18 time to time of those billing systems?  
19 A Yes  
20 Q What would be a sufficient amount of time,  
21 given the complexity of BellSouth's billing systems,  
22 in this context?  
23 A Our position in this context is that we would  
24 prefer to have the flexibility to back-bill to the  
25 statute of limitations or any rules in the state, so

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1 it's hard for me to tell you now what is a sufficient  
2 amount of time I gave you two examples earlier One  
3 seemed to be shorter, as far as I know, in terms of  
4 transit traffic The other one could take months and  
5 years to be able to provide -- to bill for the  
6 services that we have rendered to the customers  
7 Q Which states have rules regarding the time  
8 limit for back-billing?  
9 A I don't remember off the top of my head which  
10 ones I understand there are some that have rules  
11 Q Are these states in the BellSouth territory?  
12 A Yes  
13 Q Do any states in the BellSouth territory have  
14 statutes about the time limit for back-billing?  
15 A Yes The statute of limitations -- as far as  
16 I know, all nine states have statutes of limitations  
17 in billing In addition some have rules  
18 Q I didn't catch the end of your last  
19 statement You said that all nine states have  
20 statutes about --  
21 A Billing  
22 Q -- billing Are there statutes of  
23 limitations that don't deal with back-billing?  
24 MR CULPEPPER I object to the form  
25 of the question

1 THE WITNESS I don't really know if  
2 they don't deal with back-billings The statutes are  
3 billing statutes and for the most part, my  
4 interpretation of the statutes is to allow people that  
5 provide services to be able to bill for those services  
6 within those limits  
7 Q (By Ms Joyce) Have you done research as to  
8 what the term "statute of limitations" means?  
9 A No, I didn't do research on what the term  
10 means In laymen's terms, limitation applies to a  
11 limit of some sort Statute is some sort of law or --  
12 promulgated by a state commission -- or I mean sort  
13 of by a state legislative body or something of the  
14 sort That's my layman's interpretation of the legal  
15 term  
16 Q Did you derive that interpretation from any  
17 document?  
18 A Just reading the statute of limitations  
19 Q In your understanding, is the statute of  
20 limitations the same thing as a time limit for  
21 back-billing?  
22 MR CULPEPPER Object to the form of  
23 a question I don't believe that was his testimony  
24 MS JOYCE I'm asking him what his  
25 understanding is

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1 THE WITNESS Statute of limitations.  
2 as I said earlier is just that, a limitation to be  
3 able to bill for services rendered by one entity to  
4 the other And the limits vary from two years to six  
5 years in our nine-state region  
6 To me interpreting that means, yes, I  
7 will be able to invoice a customer for services I  
8 rendered in the past And, at maximum, I'd be able to  
9 -- if I don't hit those limits I'd be okay It would  
10 be acceptable under the statute to do so  
11 Q Also on Page 6 of your testimony at Lines 17  
12 to 18, it states that, "These governmental bodies  
13 recognize that there are many legitimate situations in  
14 which back-billing six months, one year or longer is  
15 appropriate "  
16 Do you see that?  
17 A Yes, I see that  
18 Q To which governmental bodies are you  
19 referring here?  
20 A To state commissions and, I guess,  
21 legislative branches of the states, which are the ones  
22 that promulgate what the limits are  
23 Q And you've testified that all nine states in  
24 the BellSouth region have statutes of limitations?  
25 A As far as I know, yes, they have statutes of

23 (Pages 86 to 89)

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1 limitations on billing  
2 Q So does the term -- or phrase "These  
3 governmental bodies " refer to those nine states?  
4 A Yes In my case, yes  
5 Q What is a legitimate situation in which  
6 back-billing is appropriate?  
7 MR CULPEPPER Object to the form of  
8 the question  
9 THE WITNESS Just what it says  
10 Services that are rendered should be able to bill the  
11 customer for services that are provided to the  
12 customer That's legitimate And whether it's a  
13 contractual agreement it's the same If I'm  
14 contractually obligated to provide services, I should  
15 be able to invoice for those services and be  
16 compensated for it  
17 Q (By Ms Joyce) So are you referring to the  
18 lines of your testimony that read "appropriate to  
19 ensure that companies that provide services are  
20 allowed to be properly compensated?"  
21 A Yes  
22 Q So a legitimate situation in your  
23 understanding is one that allows a company to be  
24 properly compensated?  
25 A That's my layman's interpretation of that

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1 term, yes  
2 Q And what does the phrase "properly  
3 compensated" mean?  
4 A That I'm paid for the services that I render  
5 to an entity  
6 Q And paid no more than that?  
7 A If there is not a contractual clause that  
8 tells -- allows me to pay more or less than that then  
9 that would apply But properly compensated is I  
10 provide services to an entity I should be compensated  
11 for providing those services to an entity  
12 Q So "properly compensated." in your  
13 understanding also includes things that an agreement  
14 permits you to be compensated for?  
15 A That would seem rational to me If we agree  
16 on the terms and conditions on how much it will cost  
17 you for me -- for you to receive services from me  
18 that would be a properly appropriate legitimate  
19 charge  
20 Q And please turn to Page 7 of this testimony  
21 MR CULPEPPER Exhibit 3?  
22 Q (By Ms Joyce) Exhibit 3 Lines 1 to 2 Do  
23 you have that?  
24 A Yes  
25 Q It states that "Back-billing was established

1 in state statutes and applies to all parties whether a  
2 party is the initiator of the charge or the  
3 recipient "  
4 Do you see that?  
5 A Yes I see that  
6 Q And what did you mean by the phrase, "whether  
7 the party is the initiator of the charge or the  
8 recipient?"  
9 A Whether the party provided a service or was  
10 it the party that received the service That's what  
11 that means, the initiator or the recipient of the  
12 service  
13 Q Does the recipient of the service bill the  
14 provider of the service?  
15 A In this case, the reference was being made to  
16 any billing -- any billings and the ability for a  
17 recipient of the bill to be able to dispute a bill, as  
18 well as the ability for the provider of the bill to be  
19 able to bill for things that were not -- that were not  
20 billed -- that did not arrive at the right billing  
21 period, under-billing or over-billing  
22 So this allows both the recipient, in the  
23 case of CLPs like yours -- the ones you represent, to  
24 be able to dispute the charges that I may have sent  
25 and to have a period of time to dispute them and

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1 either pay or agree or whatever might be the case or,  
2 in our case, to be able to bill for things that were  
3 rendered that we were not able to send in a timely  
4 fashion  
5 Q And by using the term "state statutes" in  
6 Line 1 there, are you referring to the statutes of the  
7 nine BellSouth states on this issue?  
8 A That's correct  
9 Q Is it your understanding that those statutes  
10 permit the receivers of bills to dispute the charges  
11 on the bills  
12 MR CULPEPPER Object to the form of  
13 the question  
14 THE WITNESS They're billing  
15 statutes so, by default, yes  
16 Q (By Ms Joyce) Do these state statutes apply  
17 to all billing issues?  
18 A I don't remember specifically what the  
19 exceptions to the statutes were when I read them, if  
20 there were any  
21 Q Is under-billing a billing issue that is  
22 included in these state statutes?  
23 A Yes, under-billing as I explained earlier,  
24 is the ability to go back and bill for services  
25 rendered that were not able to be billed in the period

24 (Pages 90 to 93)



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1 that the services were provided to a customer  
2 Q And you testified that under-billing is the  
3 same thing as back-billing?  
4 A I believe you asked me that question a few  
5 minutes ago and I gave you an affirmative answer  
6 Yeah they're an analogous term  
7 Q Are there billing issues besides back-billing  
8 and under-billing, in your understanding?  
9 A Over-billing which would be in the case of  
10 disputes -- and in over-billing situations, a CLP  
11 would say, "This is not a charge that you should give  
12 me because you never rendered the services " That  
13 would be a billing dispute that, in essence, would be  
14 over-bill on our part  
15 Q Is it your understanding that the state  
16 statutes also regard over-billing?  
17 A I believe I said that yes That my  
18 interpretation -- that I don't remember any exceptions  
19 in the statutes It's a statute primarily to allow  
20 entities to be able to bill and be compensated for  
21 services rendered in that direction  
22 Q On Page 7 of this testimony Exhibit 3, you  
23 state at Line 9, "First such instances are expected  
24 to be few on both sides "  
25 Do you see that?

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1 A Yes  
2 Q By "instances," are you referring to billing  
3 issues?  
4 A Yes and in this case, back-billing issues  
5 Q Why do you expect them to be few on both  
6 sides?  
7 A Because as far as I know, the examples that  
8 I gave you are exceptions, not the norm I mean, the  
9 DUF billing issue was not something that happens every  
10 month It's frequent The transit traffic is  
11 probably something that does happen frequently, and I  
12 believe CLPs that you represent understand that, that  
13 transit traffic is not normally something they're  
14 going to get right away Transit traffic, by  
15 definition, is traffic that potentially comes from  
16 smaller providers, and their frequency of billing are  
17 not monthly to us at least, for the traffic  
18 Q Do you know how many times BellSouth has  
19 back-billed a CLP or a CLEC this year other than in  
20 the circumstance of transit traffic?  
21 A No, I don't  
22 Q Can you tell me what DUF stands for?  
23 A Daily Usage File  
24 Q Do you know how many times BellSouth has  
25 back-billed a CLP or CLEC this year for any reason?

1 A No, I don't  
2 Q How many CLECs were involved in the billing  
3 dispute proceedings in which you participated?  
4 A One per hearing I guess One per  
5 proceeding I believe just one in each, yes  
6 Q So it would be two to three?  
7 A Right  
8 Q Were all of these proceedings in the same  
9 state?  
10 A Yes  
11 Q Florida?  
12 A Yes  
13 Q How many back-bills were at issue in those  
14 three proceedings?  
15 MR CULPEPPER Object to the form of  
16 the question  
17 THE WITNESS I don't believe there  
18 are issues of back-billing in those proceedings I  
19 don't remember It was billing issues but not  
20 necessarily back-billing issues  
21 Q (By Ms Joyce) They were billing disputes?  
22 A Uh-huh  
23 Q In any of those cases, were the CLECs  
24 disputing the BellSouth bill?  
25 A Yes By definition, that's what they were

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1 doing  
2 Q What were the grounds for their dispute?  
3 A Charges that we charged for certain services  
4 rendered, time --  
5 Q Were they --  
6 A I'm sorry  
7 Q Continue  
8 A And that's pretty much it really  
9 Q Were they situations of over-billing in your  
10 estimation?  
11 A By definition there were disputes so they  
12 felt like they did not have to pay for the services  
13 that we billed for  
14 Q Was that, in your recollection, an  
15 over-billing situation or a back-billing situation?  
16 MR CULPEPPER Object to the form of  
17 the question  
18 THE WITNESS Disputes were, in this  
19 case, over-bills  
20 Q (By Ms Joyce) Is that two words your  
21 answer? "Over billed" or "overbill" as one word?  
22 A We billed more than they expected  
23 Q They alleged that?  
24 A Exactly  
25 Q Do you know what the outcome -- strike that

25 (Pages 94 to 97)

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1 Have any of those proceedings reached a  
2 final conclusion?  
3 A No  
4 Q Do you know how long ago those proceedings  
5 were initiated?  
6 A There was one in particular that was -- they  
7 were initiated probably last year 2003  
8 Q Do you recall roughly what time of 2003, what  
9 month?  
10 A Around summer  
11 Q Also on Page 7 of this testimony, you state  
12 at Lines 9 to 11 "Second, other business are bound by  
13 state statute and accept the time limitations and the  
14 potential billing that results as a cost of doing  
15 business "  
16 Do you see that?  
17 A Yes I see that  
18 Q To which other businesses are you referring  
19 in this sentence?  
20 A It was a generalization for any business that  
21 participates in the state That has business -- a  
22 business enterprises that does business in a state  
23 So any business, CLPs public utilities, residential  
24 customers It means generally  
25 Q Is a business the same as a residential

1 the question  
2 THE WITNESS No, I have not  
3 personally seen I would assume that state  
4 legislatures would not go through the lengths to  
5 develop statutes and laws just to have them on the  
6 books So I would believe that a rational person  
7 would think that they did that for a purpose to  
8 define the purpose of the way people should interact  
9 in a state And it makes sense to me that they would  
10 define those rules  
11 Q And it's your understanding that other  
12 businesses in other states and this state have  
13 accepted the time limitations?  
14 A I haven't personally read any legal challenge  
15 to the statute of limitations in other states so  
16 Q Do you have any reason to believe that no  
17 business has ever failed to accept a time limitation?  
18 MR CULPEPPER Object to the form of  
19 the question  
20 THE WITNESS I don't understand the  
21 question  
22 Q (By Ms Joyce) Do you think it's the case  
23 that no business has ever failed to accept the time  
24 limitation in a state statute?  
25 MR CULPEPPER Same objection

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Page 101

1 customer?  
2 A It's a generalization, so businesses, yes,  
3 they're bound by the statute of limitations from the  
4 state and they accepted it  
5 Q And so have residential customers, is that  
6 also your understanding?  
7 A No  
8 Q So you only intend to refer to businesses?  
9 A Yes  
10 Q And this is any commercial enterprise in any  
11 state is that your understanding?  
12 A Yes I think that's the purpose of statute of  
13 limitations to provide a guide in principles for  
14 people to -- for businesses to operate in the state  
15 and to have a framework for the gain of a business  
16 Q How do you know that other businesses accept  
17 the time limitations?  
18 A I believe that in the cases that I'm familiar  
19 with and I've read, and arbitrations that I've read  
20 and, potentially, this issue really hasn't come up in  
21 terms of challenging the statute of limitations  
22 Q So you have never seen an instance in which  
23 another business other than a CLEC did not accept the  
24 time limitations?  
25 MR CULPEPPER Object to the form of

1 THE WITNESS It would be a  
2 speculation on my part to make a comment I don't  
3 know what other business If you can give me a  
4 specific -- but I don't know whether businesses, in  
5 general, have refused to follow the limitations and  
6 have billed customers beyond the limits that the  
7 limitation stipulates  
8 Q (By Ms Joyce) Also on Page 7, further down,  
9 starting at Line 11 and continuing to Line 13, it  
10 states "Third the Petitioners want a time certain  
11 (90 days) across all states CLPs deal just as  
12 BellSouth does with different treatment of issues in  
13 different states "  
14 Do you see that?  
15 A Yes  
16 Q And what did you mean when you said -- or  
17 testified that, "CLPs deal just as BellSouth does  
18 with different treatment of issues in different  
19 states?"  
20 A Just that I mean, the CLPs and the CLPs  
21 you're representing, across the states that they  
22 operate will probably have to follow different statute  
23 of limitations and have different billing issues from  
24 state to state So -- and, in the case of the example  
25 we were talking about earlier, transit traffic in

26 (Pages 98 to 101)

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Page 104

1 every state could potentially be different and exceed  
2 the 90-day limit that you're proposing  
3 Q Do you have any opinion as to whether it is a  
4 good or bad outcome that CLPs and BellSouth have to  
5 deal with different rules in different states?

6 A Can you repeat the question? I lost the  
7 first part of your question I'm sorry

8 Q Do you have a personal opinion as to whether  
9 it's a good outcome or a bad outcome that CLPs in  
10 BellSouth deal with different rules in different  
11 states?

12 A My personal opinion is that, potentially,  
13 they should have something equivalent, or a standard  
14 across the states and that's a potential negotiating  
15 reason to define it Barring that then our position  
16 is that we would be -- we should be allowed to use the  
17 statute of limitations as a limit for back-billing

18 Q Is that also BellSouth's position?

19 A Yeah The position of BellSouth is that we  
20 prefer to have the statute of limitations or rules in  
21 each state be the governing standard that we would all  
22 adhere to That's proposed That's our policy  
23 position That's what I think I mentioned in my  
24 testimony

25 Q Does BellSouth prefer that the rules in each

1 issue for all the states?

2 MR CULPEPPER I object to the form  
3 of the question The question's already been asked  
4 and answered

5 MS JOYCE I don't believe it has

6 MR CULPEPPER I believe it has been  
7 asked and answered at least twice

8 THE WITNESS The preference, it  
9 seems would be to have, yes one standard across the  
10 nine states

11 Q (By Ms Joyce) Thank you

12 At Page 7 on the bottom of the page at  
13 Line 20 you begin a discussion about Section 2 1 7 of  
14 the Agreement Do you see that?

15 A Yes

16 Q And the term 2 1 7 also appears in Line 25?

17 A Yes I see that

18 Q Do you also see on Page 8 that the term 2 1 7  
19 appears twice in that top paragraph?

20 A Yes, I see that

21 (Exhibit 9 marked for  
22 identification )

23 Q (By Ms Joyce) I'm handing you an exhibit  
24 that's been marked Exhibit 9 Can you tell me what  
25 this document is?

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1 state are uniform on this issue?

2 A I don't believe we have much of a say what  
3 the legislature in any state would decide is  
4 appropriate for their state It seems like they're  
5 all different anyway

6 Q Does BellSouth have a preference?

7 MR CULPEPPER Object to the form of  
8 the question

9 THE WITNESS I believe in the case  
10 of BellSouth, any standard would potentially  
11 facilitate the processing of all those bills across  
12 the states If it's a standard that was reasonable I  
13 think just like any other group of people BellSouth  
14 would be willing to accept it

15 Q And when you said "standard" in your response  
16 just now, did you mean a uniformed standard across the  
17 nine states?

18 A If it's rational and reasonable -- I believe  
19 we even provided you as an offer, that in two years,  
20 the same that you offer for over-billing would be  
21 applicable to this To us that's a rational,  
22 reasonable offer

23 Q And understanding that BellSouth has no  
24 control over the legislature, as you said, does  
25 BellSouth prefer that there be one standard on this

1 A It's Attachment 7, Billing I assume it's  
2 the Attachment that corresponds to the Interconnection  
3 Agreement that we're arbitrating

4 MS JOYCE Again I'll represent to  
5 Counsel that this is --

6 MR CULPEPPER The latest version

7 MS JOYCE The version sent by Mr  
8 Meza to our office on November 22nd

9 MR CULPEPPER That's fine

10 Q (By Ms Joyce) Please turn in this exhibit  
11 to Page 14

12 MR CULPEPPER Is this going to be  
13 Exhibit 9?

14 MS JOYCE It is

15 MR CULPEPPER Okay Thanks

16 Q (By Ms Joyce) And do you see on that page or  
17 the following page a Section 2 1 7?

18 A No I don't see a 2 1 7 section

19 Q Is it possible that in your testimony when  
20 you said 2 1 7 that you meant 2 1 6?

21 A Yes

22 Q I just wanted to be sure that I knew which  
23 section --

24 A Billing disputes

25 Q Looking back at your testimony which is

27 (Pages 102 to 105)

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Page 108

1 Exhibit 3 -- I believe you have it in front of you  
2 A Yes  
3 Q If you could turn the page to Page 8, please  
4 A Okay  
5 Q It states at Lines 5 to 6 that, "BellSouth  
6 would agree to two years for back-billing in North  
7 Carolina "  
8 Do you see that?  
9 A Yes  
10 Q Does this statement also apply to other  
11 states in the BellSouth region?  
12 A I believe it's an offer across the states  
13 that we are arbitrating the CLPs  
14 Q And why would BellSouth agree to two years  
15 for back-billing?  
16 A It was an offer made to them as a commercial  
17 offer made to the CLPs and it's in response to an  
18 agreement that since the CLPs felt comfortable with a  
19 two-year limit for billing disputes, and this is still  
20 the same, it's a billing concept dispute -- I mean  
21 it's a billing issue that you would be amiable and  
22 agreeable to doing a two-year for under-billing  
23 Q Do you know whether petitioners have asked  
24 for a shorter time for back-billing?  
25 A I understand they have asked for a shorter

1 region has adopted a set time frame for back-billing"  
2 A Beyond the statute of limitations or rules  
3 regarding the statute of limitations, I'm aware that  
4 there are statutes of limitations and there are rules  
5 for billing in states, but --  
6 Q Do you know what time frame other states set  
7 for the statute of limitations?  
8 A It varies from two years to six years  
9 Q Do you know if any state adopted a time frame  
10 for the statute of limitations that is shorter than  
11 two years?  
12 A I'm not aware of a statute of limitations  
13 being shorter than two years. There are rules for  
14 specific applications within the statute of  
15 limitations that might have allowed shorter than two  
16 years' time frame for specific conditions.  
17 Q And what would those rules for specific  
18 conditions be?  
19 A And I can't remember what the state was, but  
20 there's one state that had specific fraudulent  
21 provisions that if the entity providing the service  
22 was to back-bill for fraudulent reasons -- I mean, on  
23 incorrect records, that they would be allowed to be  
24 shorter -- that the limitation would be a shorter  
25 period of time. I don't remember the -- whether it

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Page 109

1 time frame  
2 Q Do you know what time frame they asked for?  
3 A I believe it was 90 days. I don't remember  
4 correctly.  
5 Q And 90 days is unacceptable?  
6 A Yes  
7 Q Do you know whether Petitioners asked for a  
8 one-year term for back-billing at any time during  
9 negotiations?  
10 A I'm not aware whether they did or not.  
11 Q Do you know whether the Petitioners asked for  
12 a six-month time frame for back-billing during these  
13 negotiations?  
14 A I'm not aware.  
15 Q Do you know whether BellSouth has agreed to a  
16 time frame for back-billing shorter than two years  
17 with any other CLEC?  
18 A I don't know whether they have and I'm  
19 assuming there were negotiated contracts that had  
20 different circumstances that led us to agree to  
21 something shorter than two years. That's something  
22 that we did. They're unique contracts and there are  
23 different circumstances to potentially what the CLPs  
24 and current arbitration contract is.  
25 Q Do you know if any state in the BellSouth

1 was a year or two years or 18 months or a couple of  
2 months. I don't remember the specific reduction from  
3 the statute. But, I'm aware there are some rules in  
4 some states. I don't think all of them, but there are  
5 some rules in some states for specific conditions for  
6 billing issues that could be shorter than two years.  
7 Q Is it your understanding that BellSouth's  
8 Interconnection Agreement in a particular state adopt  
9 the time frame set by that state?  
10 A Is the question do we comply with the statute  
11 of limitations and the rules promulgated by the state  
12 commissions and legislature? Yes, we do and most of  
13 our agreements probably adhere to that unless they  
14 were negotiated terms.  
15 Q So if they were negotiated terms, is it  
16 possible that there is something -- that they set a  
17 time frame at something different than what the state  
18 commission set?  
19 A I would assume that that's possible. I would  
20 also assume that they would normally not exceed it.  
21 Q What do you mean by "normally not exceed it?"  
22 A That it wouldn't go beyond the limit.  
23 Q A longer time frame?  
24 A Exactly. That would make us not a  
25 law-abiding company.

28 (Pages 106 to 109)

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1 Q Would BellSouth agree to a one-year time  
2 frame for back-billing with the Petitioners?  
3 A I don't know I mean that's something that  
4 the negotiating team would have to evaluate  
5 Q At Page 8 of your testimony which is Exhibit  
6 3 here --  
7 A Okay  
8 Q -- at Lines 15 to 25, I believe you're  
9 discussing a recommended order in North Carolina dated  
10 March 2nd 2004, is that right?  
11 A Yes  
12 Q Do you know if there's a final order of the  
13 North Carolina commission on this issue at this time?  
14 A I believe there is, yes  
15 Q And do you know whether that order adopts the  
16 position that you've provided in quotes at Lines 19 to  
17 24?  
18 A I believe so yes It's a 12-month and  
19 either party can petition the commission for a  
20 particular charge up to 36 months, which is the  
21 statute of limitations in the state of North Carolina  
22 And it is an order, so we would comply with the order  
23 Q And please turn now to what I believe is  
24 Exhibit 4 It's your November 19th testimony to the  
25 Tennessee Regulatory Authority?

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1 A Okay  
2 Q Do you know whether the state of Tennessee  
3 has adopted a time frame for back-billing?  
4 A A statute of limitation for back-billing?  
5 Q (Counsel nods head )  
6 A Yes, they have a statute of limitation for  
7 back-billing -- I mean, for billing Sorry A  
8 billing statute of limitation  
9 Q So, when I say time frame for back-billing  
10 does that equate to statute of limitations for billing  
11 in your mind?  
12 A Yeah, billing in general would address  
13 both Under-billing which we're in this case  
14 calling back-billing and over-billing which, in this  
15 case we call disputes  
16 Q Do you know what the statute of limitations  
17 is in Tennessee?  
18 A I believe it's six years but I would have to  
19 check But I think it's six years  
20 Q On Page 6, Lines 2 to 4  
21 A Okay  
22 Q It states that "In the spirit of compromise  
23 BellSouth has agreed to use the same limitations  
24 period that the CLECs have agreed to use for the  
25 filing of billing disputes - that is two (2) years "

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1 Do you see that?  
2 A Yes That's what I mentioned earlier about  
3 over-billing, which is billing disputes You had  
4 agreed to two years for billing disputes, and we  
5 agreed that that's reasonable for also  
6 under-billing -- in this case, back-billing -- and  
7 that was our proposal  
8 Q And this proposal was made for Tennessee?  
9 A I believe across all nine states  
10 Q Is it your understanding that -- strike that  
11 Why has BellSouth agreed to use the same  
12 statute of limitations period for the filing of  
13 billing disputes, that same period for statute of  
14 limitations?  
15 MR CULPEPPER Object to the form of  
16 the question  
17 THE WITNESS I think the negotiators  
18 defined that as an agreeable amount of time It's  
19 reasonable to be able to -- for you guys to dispute  
20 and for us to be able to bill services that were  
21 rendered that we weren't able to get on the right bill  
22 right away  
23 Q (By Ms Joyce) And did the negotiators feel  
24 that that time frame should be the same for both CLEC  
25 disputes and for back-billing?

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1 MR CULPEPPER I object to the form  
2 of the question  
3 THE WITNESS I believe that's what I  
4 stated in my testimony In the spirit of compromise,  
5 we agreed to use the same limitation as -- on  
6 over-billing and under-billing  
7 Q (By Ms Joyce) If Petitioners agreed to a  
8 six-month filing limit for billing disputes, would  
9 BellSouth agree to a six-month filing limit for  
10 back-billing -- or six-month time limit on  
11 back-billing?  
12 A I don't know  
13 Q On Page 7 of your November 19th testimony,  
14 which is Exhibit 4 -- do you see that?  
15 A Yes I do  
16 Q At Lines 5 to 6, you state that "I don't  
17 agree that it is necessary to establish a single  
18 90-day time limit "  
19 Do you see that?  
20 A Yes, I see that  
21 Q Why isn't it necessary?  
22 A I believe this is in reference to your point  
23 about creating business uncertainty, and I disagree  
24 I don't think it creates business uncertainty to be  
25 able to do that So, therefore, I disagree that you

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1 know -- that a 90-day limit is sufficient  
2 Q When you use the phrase, "Single 90-day time  
3 limit " did you mean a uniform 90-day time limit for  
4 all states?

5 A Which is, I believe, your offer, yes That's  
6 the offer of the CLPs

7 Q Does the time in which -- strike that  
8 Does the time period that is sufficient  
9 for BellSouth to provide a back-bill vary from state  
10 to state?

11 A I believe it's conceivable that it could vary  
12 depending on the transit traffic and other conditions  
13 in each state, which I think are different So  
14 potentially it could be different

15 Q Could the amount of time that is sufficient  
16 for BellSouth to create a back-bill vary as to --  
17 within one state?

18 MR CULPEPPER Object to the form of  
19 the question

20 THE WITNESS If you're asking me  
21 whether our processes are capable of billing across  
22 the state with the same time frame I believe our  
23 systems are capable of billing across the states I  
24 don't know if that's your question, but, yes, I  
25 believe our processes allow us to generate a back-bill

1 Q -- at Lines 9 to 10 there, it states that  
2 "Payment for services should be due on or before the  
3 next bill date (Payment due date) in immediately  
4 available funds "

5 Do you see that?

6 A Yes I see that

7 Q What day exactly would be before the next  
8 bill date?

9 A Just that Most billing cycles are 30 days,  
10 so the next bill date would be the date before the 30  
11 days is up

12 Q So a 30-day cycle?

13 A For the most part, except in the case of the  
14 month of February

15 Q And what cycle is February?

16 A It depends on the cycle of invoicing for your  
17 services which might start at the middle of the month  
18 and go to the same date the following month So in  
19 that case it would be a little shorter but I wouldn't  
20 say much shorter -- just two or three days, depending  
21 on the terms of your billing cycle

22 MS JOYCE Off the record  
23 (Short recess taken off the record  
24 from 12 55 p m to 12 56 p m )

25 Q (By Ms Joyce) Were you finished with your

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1 across the states

2 Q Does the amount of time that is sufficient  
3 for BellSouth to create a back-bill vary as to the  
4 situation?

5 A I believe I stated earlier yes that in the  
6 case of DUF files, it required enhancements to our  
7 systems before we could actually bill for the services  
8 that we rendered And in the case of transit traffic,  
9 it also is different So, yes we're able to provide  
10 billing in those situations So yeah our systems  
11 adjust it

12 MS JOYCE I think this is a good

13 time to break Let's go off the record

14 (Lunch recess taken from 12 01 p m  
15 to 12 52 p m )

16 Q (By Ms Joyce) Good afternoon, Mr Morillo

17 A Good afternoon Stephanie

18 Q Do you understand that you're still under  
19 oath?

20 A Yes I do

21 Q Please look at Exhibit 3, your November 12th  
22 testimony

23 A Okay

24 Q At Page 9 --

25 A All right

1 last answer?

2 A Yes I was

3 Q And, according to your testimony here at  
4 Lines 9 to 10, would the payment due date be on the  
5 same day of every month?

6 A Yes

7 Q Would that be regardless of what month it is?

8 A It's a 30-day -- normally it's a 30-day  
9 billing cycle So, it should fall pretty much on the  
10 same date every month, except that month of February  
11 or March that I mentioned earlier I don't know when  
12 the billing dates are There are various -- the  
13 companies you represent normally have more than just  
14 one billing cycle They receive bills from multiple  
15 billing systems They're in different times but the  
16 cycle itself is normally about 30 days

17 Q So for any one billing cycle of a Joint  
18 Petitioner the cycle is -- was the same increment of  
19 30 days?

20 A Yes

21 Q And is the reason that the billing date could  
22 change month to month is that months have different  
23 numbers of days in them?

24 A Right and also depending on when the cycle  
25 for the particular CLP is -- when it begins

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1 Q But according to when a cycle begins for that  
2 particular CLP in that particular cycle, will the  
3 payment due date always be on the same date of the  
4 month, for example, the fourth of the month?  
5 A It could be the potential exact day of the  
6 month  
7 Q But not necessarily the same exact date every  
8 month?  
9 A I would have to calculate it I mean,  
10 depending on -- if I knew exactly the billing cycle  
11 that you were discussing, I could tell you when the  
12 billing date should be and normally, when they should  
13 be receiving their invoices and, normally, when  
14 they'll be due That's part of what they receive in  
15 their bill -- is that date They'll see the date that  
16 I'm referring to here, which is the payment due date  
17 and they'll also see the bill date which is the date  
18 that we start compiling all information to create a  
19 bill So, it's our cut-off date to start compiling  
20 the information to generate the bill  
21 Q So tell me if the operation would operate  
22 thus Tell me if I have this right The CLEC got a  
23 bill on a particular date, say, the fourth The CLEC  
24 should count 30 calendar days after that, and that  
25 would be the next payment due date?

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1 A Most likely, yes  
2 Q And why do you say "most likely"?  
3 A If the day has -- February, like we were  
4 talking about I don't know what adjustments for the  
5 month were done I mean, will it be exactly on  
6 March 1st -- 4th? In your case, if it was on  
7 February 4th, potentially -- I don't know exactly what  
8 day it would fall, but the billing cycles are  
9 approximately 30 days The companies know when they  
10 are They know how frequent -- how frequently to  
11 expect them They know how many billing cycles most  
12 of them should get depending on the services that they  
13 purchased So it's something pretty stable once  
14 established so they know the cycle when the bill  
15 should arrive and when they should be due and paid  
16 That won't change every month I mean it won't  
17 change, like every month I will have something  
18 different They will know If I have four billing  
19 cycles, I will normally get my bills on such and such  
20 a date So that bill, again, the next month would --  
21 except some -- potentially February/March time frame  
22 I'm not certain how they handle that unique month  
23 Then, they'll know exactly throughout the year that  
24 they're going to receive a bill for those services on  
25 certain days

1 Q And how do you know that the CLECs know that?  
2 A They get their bills The bills have those  
3 dates in them -- on them It has the bill date as  
4 well as the payment due date  
5 Q How do you know that the CLECs get their  
6 bills?  
7 MR CULPEPPER Objection to the form  
8 of question  
9 THE WITNESS We send them to them  
10 and we confirm All three of the groups that you  
11 represent receive an electronic bill And so, the  
12 process -- the electronic bill has a confirmation that  
13 the other side received the bill What they do with  
14 the bill when they receive them you would have to ask  
15 them but they receive the bill and we would have  
16 confirmation that they received it electronic  
17 delivery  
18 MS JOYCE For the record I'm going  
19 to lodge an objection to the portion of his response  
20 that began "What they do when they receive their  
21 bill " I don't think it was responsive to the  
22 question I'm just going to lodge that, and we'll  
23 move on  
24 Q If a month only had, for instance, 28 days in  
25 it, would a 30-day billing cycle, nonetheless, apply

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1 for that month?  
2 A I don't know the specifics on that  
3 Q Do you know if any adjustment would need to  
4 be made for a 28-day month?  
5 A No, not really I don't know whether there  
6 would be an adjustment I assume that there would be  
7 an adjustment, but I don't know a specific adjustment  
8 that they would make in terms of how -- the length of  
9 the billing cycle  
10 Q I direct your attention to Exhibit 3 Page 9  
11 I think you're already there  
12 A Yes  
13 Q At Lines 14 to 16, you state "First, the due  
14 date requirements as listed in the Access Tariff  
15 cannot be differentiated from the dates for contract  
16 rates, both of which appear on the bill "  
17 Do you see that?  
18 A Yes  
19 Q What is the Access Tariff which is  
20 capitalized?  
21 A Those are access services we provide to some  
22 of your clients Access services versus UNE  
23 Q And which tariff is that? Does it have a  
24 number?  
25 A Probably the state tariffs that apply

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1 Q And on Line 15, what do you mean when you say  
2 "contract rates"?

3 A Those are the rates that we contracted that  
4 we are obligated by a service UNE types of rates that  
5 appear in the contract, clearly stipulated on Exhibits  
6 -- those are the rates -- the contract rates are the  
7 contract rates. The contract that we're discussing  
8 right now have an Attachment with those charges and  
9 rates versus something that appears on a tariff which  
10 is outside the contract

11 Q And on Lines 15 and 16 what did you mean by,  
12 "both of which appear on the bill?"

13 A Well they're going to receive bills that  
14 will probably have a combination of the two types of  
15 charges

16 Q All on one --

17 A Potentially on one invoice yes

18 Q All sent at the same time?

19 A Part of the compilation of this -- of the  
20 invoices will be compiling that information and  
21 putting it into one bill, depending on the billing  
22 cycle. So, although a CLP might have three, four,  
23 five billing cycles, each one with their individual  
24 bills, those bills will be comprised of these two  
25 items

1 tariff will be?

2 A I would assume it's the same billing cycle  
3 requirement of -- in this case, of 30 days

4 Q And does BellSouth have input into what that  
5 cycle is in a tariff?

6 A Yes

7 Q Does BellSouth have input as to what the due  
8 date will be in a contract?

9 A Yes

10 Q What did you mean in your testimony when you  
11 said "The due date requirements in an access tariff  
12 cannot be differentiated from the due dates for  
13 contract rates?"

14 A That they're probably different than the  
15 contract rates

16 Q Why does the statement that you make at Lines  
17 14 to 16 have a bearing on Issue 7-3, which is the  
18 issue for which this testimony appears in your  
19 Exhibit 3?

20 A It has a bearing because it defines the  
21 parameters of what helps define the payment due date  
22 It's depending on the services that were contracted  
23 with your clients or appear on the tariffs so that's  
24 the bearing on this particular issue of service due  
25 date

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1 Q Do you know what the due date requirements  
2 are in a BellSouth Access Tariff?

3 A I believe they vary by the tariff

4 Q Is there more than one state access tariff in  
5 any state?

6 A I think so yes

7 Q Do CLECs order out of more than one access  
8 tariff in any state?

9 MR CULPEPPER Object to the form of  
10 the question

11 THE WITNESS If the CLECs operate in  
12 different states, I would assume yes

13 Q (By Ms Joyce) Within one state, is it  
14 possible a CLEC orders out of more than one state  
15 tariff?

16 A Yes It would have to be yes depending on  
17 the service that they're purchasing from us

18 Q Who sets the due date requirement in a  
19 BellSouth Access Tariff?

20 MR CULPEPPER Object to the form of  
21 the question

22 THE WITNESS I don't specifically  
23 know who sets the due dates on the tariffs

24 Q (By Ms Joyce) Does BellSouth have any input  
25 as to what the due date requirements in an access

1 Their normal billing cycles -- all these  
2 services are billed to the customer in compiled  
3 information once a month. The cycle's the same month  
4 to month. The client receives information on the same  
5 dates. They have the same potential due dates. So, I  
6 think they're related

7 Q And the fact that the dates -- due dates in  
8 an access tariff cannot be differentiated from the due  
9 dates in a contract, how does that have a bearing on  
10 Issue 7-3?

11 A Because you have to put it all together at  
12 the same time to be able to bill it to you, so that's  
13 how it's related. There are two different types of  
14 services that have to compile the information. They  
15 have to put it in a billing cycle. You have to  
16 receive this different service's bill at that  
17 particular time that you've known month after month  
18 after month that you're going to receive them

19 So this is something that's pretty  
20 standard. You and I as consumers, have -- pay our  
21 bills on a recurring basis around the same time every  
22 month. This is the same idea here. In this case,  
23 your clients are all receiving their bills  
24 electronically

25 Q On Page 9 of this exhibit, at Line 18 --



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1 A Yes  
2 Q There's a statement. "Any such change would  
3 require a work request "  
4 Do you see that?  
5 A Yes  
6 Q And what do you mean by that statement?  
7 A That anything that we do for your clients  
8 will probably have to apply to all the clients that we  
9 have -- all the CLPs that we have, because we can't do  
10 one-offs. We can't just treat you differently in  
11 these cases than anyone else in order to give you a  
12 different -- in your case, you're asking for a certain  
13 due date to be different than the norm so it would  
14 require work on our part to enhance our systems  
15 Q I'd like to take your answer in two parts  
16 Why can't BellSouth do as you termed it one-offs and  
17 treat Petitioners, in a particular way different from  
18 other CLECs?  
19 A It's administratively burdensome. It  
20 requires work enhancements to systems to be able to do  
21 that. It costs money to be able to do that. And it  
22 would change the processes that the billing folks also  
23 would have to deal, so not only enhancements to  
24 potential systems but also a process change for the  
25 people who generate the bills for your clients

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1 Q Is there any prohibition on BellSouth  
2 treating one CLEC differently with respect to billing  
3 cycles, than another CLEC?  
4 A I'm not aware of any prohibition  
5 Q What is a work request?  
6 A It's an enhancement. You're asking for an  
7 enhancement to an application. In this case, billing  
8 systems. So it's a formal request, if you will, to  
9 change a system to do something different than it  
10 does today  
11 Q Who would make a work request?  
12 A The people that normally bill your clients  
13 They're in charge for the billing -- generation of the  
14 billing. They would generate the request in  
15 coordination to negotiators and people who service  
16 your clients, as well besides just billing  
17 Q Would a Petitioner file a work request -- one  
18 of the Joint Petitioners here file a work request?  
19 A I guess they could, yes. But I'm assuming in  
20 this case -- this particular case that we're  
21 arbitrating the fact that you're requesting something  
22 different than is done today, and we would have to  
23 internally generate a request to enhance the systems  
24 and processes so by default you are asking for a work  
25 request

1 Q Who would perform the work requested in a  
2 work request, with respect to a change in the billing  
3 cycle?  
4 A The billing people supporting your accounts  
5 In combination, whomever the account executive might  
6 be which I assume that's who your clients would  
7 contact to begin the process  
8 Q Please turn to Page 10 of your November 12th  
9 testimony, Exhibit 3  
10 A Okay Page 10  
11 Q Page 10  
12 A Okay  
13 Q At Lines 5 to 7 you state that, "Moreover, a  
14 CLP can elect to receive its bills electronically so  
15 as to minimize any delay in bill printing and  
16 receipt "  
17 Do you see that?  
18 A Yes I see that  
19 Q And what do you mean by that statement?  
20 A That every company has an option to receive  
21 their bills electronically instead of having them sent  
22 through the post. And your clients, in this case,  
23 have that, and I believe all of them do receive the  
24 bills electronically. So none of them, unless they  
25 request a bill on paper will get them normally on

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1 paper. They get them electronically delivered, which,  
2 in this case, shaves the amount of time that paper  
3 would be in transit through the post  
4 Q It reduces the amount of time?  
5 A For them to receive the information, yes,  
6 from however long it would take for them to receive it  
7 through normal post in three or four days -- two or  
8 three or four days, to as soon as the bill is  
9 generated, send it electronically the same day  
10 Q At Lines 19 to 21 on Page 10, you state that,  
11 "Regarding the allegation of untimely bills from the  
12 time the electronic bill goes out (generally 4-6 days  
13 after 'bill period') the CLP generally has 22 days to  
14 review and pay his bill "  
15 Do you see that?  
16 A Yes I see that  
17 Q Can the bill period, as noted here be longer  
18 than six days  
19 A On average, it's closer to five days from the  
20 time that we say if all your billing, for the sake of  
21 argument, starts at the first of the month, then the  
22 first of the month I would start compiling all the  
23 information and putting it together. The fact that  
24 there are two billing systems that will have to  
25 compile the information to send the information to

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1 you, that's what takes two, three, four days to  
2 generate. And at that point in time, it's sent to  
3 your client electronically.  
4 Q Can you identify for me the two billing  
5 systems that you discuss in your answer?  
6 A CABS, C-A-B-S.  
7 Q What does that stand for?  
8 A Gosh, I don't remember right now. And IBS.  
9 Q Is CABS Carrier Access Billing System?  
10 A Yes.  
11 Q And what was the other one?  
12 A IBS.  
13 Q And what does IBS stand for?  
14 A I'm looking in my testimony. I believe I  
15 spelled them out. Actually, I didn't spell them out  
16 -- I did not spell the acronyms on Page 13 of the  
17 Exhibit 3. I believe. And then, I described what IBS  
18 normally bills -- what services IBS normally bills and  
19 then what services CABS normally bills. I explained  
20 it on Page 14 of my testimony. I just didn't spell  
21 out the acronym of the systems.  
22 MS JOYCE: I'm not familiar with  
23 what IBS stands for. Do you know, Mr. Culpepper?  
24 MR. CULPEPPER: It's used to build  
25 UNE services, but what the acronym stands for, I

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1 cannot recall.  
2 Q (By Ms. Joyce) Do you have any familiarity,  
3 Mr. Morillo, with BellSouth's operations support  
4 systems?  
5 A Some familiarity, yeah.  
6 Q Are CABS and IBS parts of OSS, Operations  
7 Support Systems?  
8 A I guess you could consider them part of the  
9 OAS, yes. I think most of the times people think of  
10 OAS as the ordering provisions systems more than the  
11 billing systems. But in the context of a  
12 telecommunications company, they could conceivably be  
13 part of an OAS -- OSS system group.  
14 Q Just to clarify, were you also discussing OSS  
15 in that answer?  
16 A Right, yes. I'm sorry, OSS.  
17 Q And not OAS?  
18 A Correct, OSS.  
19 Q We have the same acronym.  
20 A Yes.  
21 Q Is CABS used to generate bills for wholesale  
22 customers?  
23 A Yes.  
24 Q Is it used to generate bills for retail  
25 customers?

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1 A I believe so, yes. I think it's also the  
2 system that potentially bills access charges.  
3 Q What are access charges?  
4 A Charges to provide the likes of DS series and  
5 VS-1 special access for companies like yours or any  
6 other commercial agreement -- any other commercial  
7 company that will require those services.  
8 Q Who pays access charges?  
9 A I believe companies like you do.  
10 Interexchange also pay access charges -- I mean  
11 access -- they buy access services from us to connect  
12 their facilities.  
13 Q Is IBS used to generate bills for wholesale  
14 customers?  
15 A Yes.  
16 Q Is it used to generate bills for retail  
17 customers?  
18 A I don't know.  
19 Q Do you know why the billing functionalities  
20 of CABS and IBS cannot be combined into one system?  
21 A I don't know. That would be wild  
22 speculation. I don't know what -- I assume they're  
23 very complex applications and they would bill for a  
24 purpose.  
25 Q On Page 10 at Lines 22 to 23, you state that,

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1 "It takes approximately 24 hours for the billing  
2 systems to run."  
3 Do you see that?  
4 A Yes.  
5 Q What does that statement mean?  
6 A It goes along with what I was saying earlier.  
7 It takes a while to compile all the information, and  
8 then the day that the bill is actually produced, it  
9 takes approximately that amount of time to produce  
10 that actual bill. Since charges for your clients come  
11 from various sources, in this case we would have to  
12 start compiling all the information and then run a  
13 process in the billing system to actually generate the  
14 bill as your client would see it.  
15 Q So is it your testimony that it takes 24  
16 hours to print out the bill?  
17 A (Witness nods head).  
18 Q And that is an operation that is different  
19 from pulling the data?  
20 A Yes.  
21 Q So, in your testimony, is the period at  
22 Line 22, the 3 to 4 days, a separate period from the  
23 24 hours for the billing systems to run that you  
24 state on Line 23?  
25 A Yes. As I stated starting on Line 21, for

34 (Pages 130 to 133)

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1 example. if the bill date is the first of the month.  
2 the billing system normally pulls the data three or  
3 four days later and then it takes approximately 24  
4 hours to actually generate the bill and to see it as  
5 you would receive it

6 Q And do those operations comprise the entire  
7 process for generating the bills for CLEC?

8 A As far as I know yes

9 Q So, if I were to add these figures  
10 together --

11 A You'd come up with four to six days, yes, in  
12 total Three to four to compile or pull the data and  
13 24 hours to actually run the job that generates the  
14 bill that I send to you -- to your clients

15 Q And that can be six days in total?

16 A Four to six days, yes, as I stated on Line 22  
17 of the same paragraph

18 Q Could it take longer?

19 A I'm not familiar with it taking longer Thus  
20 is the -- pretty much the standard process and the  
21 best estimate I was able to receive

22 Q From whom did you receive those estimates?

23 A From one of those folks that you asked me the  
24 names of the billing people -- the billing folks

25 Q On Page 10, Line 20 to 21 you state "The

1 receiving an electronic bill is an electronic bill  
2 ever printed?

3 A Your clients have the option to print it if  
4 they want to see it that way They can also view it  
5 electronically if that's their preference It's  
6 really their preference to whether or not they want to  
7 print it

8 Q And it's your testimony that electronic bills  
9 appear on a computer screen, is that correct?

10 A Or a computer media whether it's a file that  
11 you open and see the information And, eventually, if  
12 you want to view it electronically, I would assume you  
13 would need a screen of some sort to be able to see the  
14 rendition of the electronic data on your screen

15 Q And you've testified that the bill date is  
16 the date in which BellSouth starts compiling data, is  
17 that right?

18 A That's what I was referring to earlier as the  
19 cut-off date, where at that point in time, we start  
20 pulling the data to prepare the bill and generate the  
21 bill

22 Q Is that also the date that appears on the  
23 bill when the CLEC sees it?

24 A I believe the CLEC will see the payment due  
25 date and somewhere in the bill, potentially, there is

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1 CLP generally has 22 days to review and pay its bill "

2 Do you see that

3 A Yes I do

4 Q And why do you say the CLP generally has that  
5 amount of time?

6 A Because if you add six days that it takes for  
7 you to receive it plus 22 days on average to review  
8 it and pay, then you're pretty close to the 30-day  
9 billing cycle So, that's how much time the CLPs  
10 would have to review -- on average, 22 days Probably  
11 a little bit more to review and pay the bills

12 Q So, that period represents the time that is  
13 left out of the billing cycle after the bill  
14 generation and printing process is complete, is that  
15 right?

16 A Approximately, yes

17 Q What would it mean to print an electronic  
18 bill?

19 A From a laymen's term it would be for your  
20 client to -- I believe I've provided software for them  
21 to review the bills but beyond that, there is a  
22 process that you would hit "print" and print bills or  
23 sections of the bills that you would want to see on  
24 paper after you received it electronically

25 Q Aside from what the CLP would do when

1 -- I haven't seen particular CLEC bills for your  
2 clients, but, yes, I would expect that the bill date  
3 would be there as the start of the billing cycle for  
4 them, as well as the payment due date

5 A On Lines 22 to 22 you state, "The billing  
6 systems normally pull the data 3-4 days later (say on  
7 the 5th) "

8 Do you see that

9 A Yes, I see that

10 Q By -- what do you mean by "Say on the 5th"?

11 A Giving you -- for example, if the first bill  
12 date is the first of the month, then three or four  
13 days later -- which, if I count, that would be on the  
14 fifth of the month

15 Q If, indeed it were the fifth of the month  
16 what bill date would appear on the bill when the CLEC  
17 saw it?

18 A The first of the month

19 Q Is pulling the data, as described on Line 22  
20 a separate process from the billing systems running as  
21 described on Line 23?

22 A I'm not intimately familiar with exactly what  
23 occurs what computer program runs to do which  
24 function I just want to give you a description of  
25 their two big functions that take place One is

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1 compiling the information together, and one is  
2 actually running some computer program that generates  
3 the bill. I don't know, so I couldn't give you  
4 specifics of the names, when, the sequence, what runs  
5 first, what runs second to compile the data  
6 Q Do you know whether those processes occur  
7 simultaneously?

8 A I don't know

9 Q At Page 10 the very bottom beginning at  
10 Line 25 and continuing to the next page, there's a  
11 statement, "Therefore, the CLP has approximately three  
12 weeks to pay its bill after receipt "

13 Do you see that

14 A Yes I see that

15 Q Do you know whether BellSouth is given  
16 approximately three weeks to pay bills it receives  
17 from CLECs?

18 MR CULPEPPER Object to the form of  
19 the question

20 THE WITNESS I don't know but we  
21 normally pay our bills on time, and if it's the same  
22 period of time, we are adhering to the same period of  
23 time

24 Q (By Ms Joyce) Also on Page 10, Lines 2 to 3  
25 you state -- do you see that?

1 MR CULPEPPER Object to the form of  
2 the question

3 THE WITNESS No To me, they're  
4 both reasons There's -- I don't see a reason,  
5 whether legitimate or just plain reason that the terms  
6 of 30 day for -- 30 days, calendar after receiving  
7 the bills makes sense We're treating your customers  
8 just like we treat other customers They have the  
9 same amount of time to pay their bills

10 Q (By Ms Joyce) Do you mean my clients?

11 A Your clients, I'm sorry And your clients --  
12 some are doing very well, some are not doing very well  
13 in this case But some of your clients did well in  
14 terms of paying on time and they somehow figured out  
15 a way to do this And some are not So, it's not  
16 impossible

17 Q A bill period begins on the bill date, is  
18 that right?

19 A Right A billing due date, I guess, to be  
20 more specific and exact In my testimony, I believe I  
21 called it the billing due date, right on Page 10,  
22 Line 5

23 Q Did the bill period begin on the billing due  
24 date?

25 A Yes As I mentioned before to you in my

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1 A On 10?

2 Q Yes

3 A Yes

4 Q "There is no legitimate reason to allow the  
5 Petitioners a full thirty calendar days after  
6 receiving a bill to make payment "

7 Do you see that

8 A Yes I see that

9 Q What did you mean by that statement?

10 A Just what it says that on -- there's no  
11 reason to allow the Petitioner that much time We --  
12 it's pretty standard that whether you're a company or  
13 a commercial enterprise or a customer like you and I  
14 -- residential customers that there's a billing cycle  
15 that's about 30 days That you're going to receive  
16 the bill, that you're going to have to review the bill  
17 within that period of time and pay the bill by the  
18 time that it's due Otherwise in my case as a person  
19 that buys services I would have to pay some sort of  
20 fee -- a late fee for not paying on time So, I  
21 didn't see it's a legitimate reason for the terms that  
22 they asked -- that the CLPs asked

23 Q In your answer, you use the term "legitimate  
24 reason" and also just the term "reason" Is there a  
25 difference between "legitimate reason" and "reason"?

1 example, it is the first of the month that would be  
2 the bill period date where the bill cycle would begin

3 Q Does that cycle --

4 A That would determine where my cut-off is to  
5 start compiling information to generate your bill

6 Q What date begins the bill period?

7 A The date when I start compiling the  
8 information The date that it becomes a cut-off for  
9 me to say, "Okay Up until this period of time I'm  
10 going to bill you for those services rendered "

11 Q On Page 10, Line 24 to 25, you state, "The  
12 due date is generally 30 days after the bill period "

13 Do you see that

14 A Yes

15 Q When would the due date not be 30 days after  
16 the bill period?

17 A I think we discussed this in exception so I  
18 -- in the month of February, where there might be an  
19 adjustment, so the bill cycle might be shorter than 30  
20 days If we adhere to the example that every first of  
21 the month you're going to receive a bill, then the  
22 first of March you would receive a bill that really  
23 truly encompass -- or is comprised of 28 days for the  
24 month of February In that example, that's how it  
25 would work

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1 Q And at Line 20, you testified that it  
2 generally takes four to six days to generate a bill  
3 Do I have that right?  
4 A Yes four to six days, approximately, to  
5 generate a bill Three to four are pulling together  
6 information and one approximately to generate the  
7 actual bill that's sent to you electronically -- sent  
8 to your clients electronically  
9 (Exhibit 10 marked for  
10 identification )  
11 Q (By Ms Joyce) I'm handing you a document  
12 marked Exhibit 10 Do you recognize this document?  
13 And I'll state it's an excerpt of a document  
14 A Yes I'm certain that I've read this or parts  
15 of this  
16 Q On Page 2 -- physical Page 2 of this exhibit  
17 do you see where it -- there's an issue There's a  
18 box that says, "Issue No 7-3"?  
19 A Yes  
20 Q Have you read the text that follows that box?  
21 A Yes I read it  
22 Q This is Joint Petitioners' testimony with  
23 respect to this Issue 7-3, do you understand that?  
24 A Yes, I understand that  
25 Q Can you please turn to the page of this

1 A Yes  
2 Q Do you see where it says "The witness should  
3 be prepared to respond to questions related to all  
4 matters contained in the witness's direct testimony  
5 that has been filed in the above-captioned case?"  
6 A Yes  
7 Q Do you believe that Xspedius' testimony on  
8 Issue 7-3 is related to the testimony that you've  
9 provided in this case?  
10 MR CULPEPPER Object to the  
11 question Again his deposition is related to his  
12 testimony I think it's impermissible for you to pit  
13 the testimony of your witness against his It's not  
14 part of his testimony If it's somewhere related to  
15 his rebuttal testimony let's go to that  
16 MS JOYCE Mr Morillo has opined  
17 several times about the manner in which the  
18 Petitioners received their bills, the manner in which  
19 they deal with them He's testified that some of them  
20 are doing well and some of them are doing not so well  
21 I think that having made that statement, he's  
22 evidenced some familiarity with the experience of the  
23 Petitioners and so I think a question related to why  
24 Xspedius' results are of particular -- have a  
25 particular result, I'm not asking him to authenticate

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1 exhibit that says 115 on the bottom  
2 A Okay  
3 Q And at Lines 6 to 7 it reads "Our results  
4 demonstrate that it takes on average 6 45 days for  
5 Xspedius to receive a bill from BellSouth "  
6 Do you see that  
7 A Yes I see that  
8 Q Do you know why it takes more than six days  
9 for Xspedius to receive a bill from BellSouth?  
10 MR CULPEPPER I'm going to object  
11 to the question I mean, you're asking this deponent  
12 about your witness's testimony I think that's beyond  
13 the scope of his notice that is related to his  
14 testimony  
15 Q (By Ms Joyce) Can you please look at  
16 Exhibit 1, Mr Morillo  
17 A Exhibit 1?  
18 Q Uh-huh It looks like this (indicating)  
19 A Okay  
20 Q And would you accept that this document what  
21 received by your counsel?  
22 A Yes it seems that that was the case It was  
23 mailed to Edward Rankin yes  
24 Q At the bottom of the first page of this  
25 exhibit --

1 Xspedius' results, but I'd like to ask him why he  
2 thinks it might be or if there's a reason that might  
3 happen I think I'm entitled to that answer  
4 MR CULPEPPER I just respectfully  
5 disagree and, in fact, if I recall correctly part of  
6 Mr Morillo's prior testimony was -- you asked to be  
7 stricken as nonresponsive  
8 But again, I mean, it's simply not his  
9 testimony and to ask him something about one of the  
10 Joint Petitioners -- something in their testimony as  
11 to when they received their bill, I don't believe it's  
12 a proper question to ask this witness  
13 MS JOYCE Will you maintain that  
14 position during the duration of this arbitration?  
15 MR CULPEPPER The position --  
16 MS JOYCE That Mr Morillo should  
17 not be asked about the Joint Petitioners' testimony?  
18 MR CULPEPPER I've lodged my  
19 objection  
20 MS JOYCE I'm just asking what I  
21 can expect for the rest of the case  
22 MR CULPEPPER I've lodged the  
23 objection to the question I simply don't have a  
24 crystal ball to tell you what is or is not  
25 objectionable down the line I will simply reiterate

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1 this particular line of questioning I take objection  
2 to You can proceed with the deposition  
3 Q (By Ms. Joyce) All right Do you know  
4 whether BellSouth is presently disputing any bills  
5 that it has received from one of the Petitioners?  
6 A I don't know I can't answer that question  
7 Q On Page 10, Line 24 of Exhibit 3 your  
8 November 12th testimony there's a statement "Paper  
9 bills will take longer "  
10 Do you see that  
11 A Page 10?  
12 Q Line 24  
13 A I'm sorry Yes I do I'm sorry  
14 Q Can you estimate how much longer paper bills  
15 take?  
16 A It depends on how quickly the postal service  
17 delivers the bill My understanding is that the  
18 normal period of time is approximately three days  
19 Pretty standard for the postal service to deliver  
20 bills or any correspondence in three days I don't  
21 know if that applies in this case, but I would have to  
22 think that approximately would be a reasonable  
23 estimate However as I stated earlier, your clients  
24 received their bills electronically  
25 Q I'd like to turn now to Page 11 of your

1 types of issues are really truly exceptions and, as  
2 far as I know, we've never had to execute this So, I  
3 believe both the CLPs and ourselves understand that  
4 these are serious matters and that very seldom, if  
5 any, there is disagreement that these things are  
6 actually occurring, and the appropriate actions that  
7 should be taken are easily understood So, I really  
8 don't understand why this would be a contentious  
9 issue  
10 Q What are serious matters?  
11 A As I state on my testimony -- on Exhibit 3 on  
12 Page 12, Line 5 "Listening in on party lines  
13 impersonation of another with fraudulent intent,  
14 harassing phone calls, threatening calls, use of  
15 profane or obscene language etc ." which, for the  
16 most part, are potentially illegal acts Those are  
17 the matters I'm referring to  
18 Q Which services would be terminated or  
19 suspended?  
20 A Whatever services allows this to happen in  
21 this case whether it's a -- whatever connectivity  
22 that would provide that you, in the end, provide  
23 service with to your end-users  
24 Q Do you know what LENS, L-E-N-S, is?  
25 A It's the system that the CLPs use to order

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1 November 12th testimony, which is Exhibit 3  
2 A Okay  
3 Q And Lines 6 to 9 --  
4 A Yes  
5 Q -- these lines articulate the dispute that is  
6 at Issue 7-5, is that your understanding?  
7 A Yes  
8 Q And it reads, "What recourse should a Party  
9 have if it believes the other Party is engaging in  
10 prohibited unlawful or improper use of its facilities  
11 or services abuse of the facilities or noncompliance  
12 with the Agreement or applicable tariffs?"  
13 Do you see that  
14 A Yes I see that  
15 Q My question is this issue regards improper  
16 activity by whom?  
17 A By an end-user and potentially your clients  
18 Most likely the end-users of the facility  
19 Q What recourse does BellSouth want to have in  
20 this Agreement if improper use of its facilities or  
21 services occurred?  
22 A We want to have the right to suspend service  
23 or terminate service if the CLPs don't correct the  
24 situation It's a right that we have and we'd like to  
25 execute that right if necessary Normally these

1 services from us  
2 Q Do the CLPs' customers use LENS?  
3 A I don't believe so It's just -- the CLPs  
4 are the ones that have access to the applications for  
5 them to be able to order the services that they  
6 purchase from us  
7 Q If improper activity were perpetrated by an  
8 end-user, would BellSouth terminate the LENS access of  
9 the CLP?  
10 A If after discussing the incident with the  
11 CLPs, and not -- and the CLPs not taking any action to  
12 correct the situation we would retain the right to  
13 suspend access to that application that we just  
14 discussed LENS and/or terminate the service  
15 Q And by "service", do you refer to LENS  
16 service in the --  
17 A The actual service -- terminating of the  
18 service LENS is the ordering application, so the  
19 access to that application would be stopped and if  
20 even then, there's no corrective action on the part of  
21 the CLP, then we retain the right also to terminate  
22 the service -- that particular service  
23 Q Could you please pick up Exhibit 9, which is  
24 Attachment 7 to the Agreement being arbitrated in  
25 this case

38 (Pages 146 to 149)

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1 A Okay  
2 Q And I direct your attention to Page 7 At  
3 the bottom of the page you see there's a number  
4 171?  
5 A Yes  
6 Q And that indicates that in your  
7 understanding this text regards Section 171 of  
8 Attachment 7?  
9 A Yes  
10 Q And you agree that this is the section of the  
11 Agreement that's in dispute in Issue 7-5?  
12 A Yes  
13 Q Do you see that there, on Page 7, is a  
14 "customer short name version"?  
15 A Yes I see that  
16 Q And on the next page there's a "BellSouth  
17 version"?  
18 A Yes  
19 Q To your knowledge, would that indicate that  
20 the Parties don't agree on the language that goes in  
21 this section?  
22 A That would be my interpretation of their --  
23 of your proposal and our proposal  
24 Q Please turn to Page 8 where your proposal is  
25 And take a moment, if you need to, to review this

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1 language and tell me whether LENS is referred to in  
2 this language  
3 A Yes  
4 Q LENS is referred to in this language?  
5 A Yes There's a reference -- gosh, it's the  
6 -- the line starts, "Upon detection of such use, the  
7 detecting Party will provide written notice to the  
8 other Party that additional applications for service  
9 may be refused that any pending orders for service  
10 may not be completed and/or that access to ordering  
11 systems may be suspended if such use is not corrected  
12 or ceased by the fifteenth (15th) calendar day  
13 following the date of the notice"  
14 So there is the reference to the ordering  
15 system suspension -- access to this  
16 Q Is LENS part of the ordering system?  
17 A Yes  
18 Q Are there other ordering systems?  
19 A I believe LENS is the primary ordering system  
20 that the CLPs use to ask us to provision services for  
21 them  
22 Q Does BellSouth own the LENS system?  
23 A I believe BellSouth developed the LENS  
24 system, yes  
25 Q Does BellSouth make adjustments to the LENS

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1 system from time to time?  
2 A If need be, yes, they can make adjustments to  
3 the LENS system  
4 Q I direct your attention to Exhibit 3 your  
5 November 12th testimony, at Page 12?  
6 A Okay  
7 Q And on that page at Lines 9 to 10 you've  
8 stated, "BellSouth cannot suspend access to LENS on a  
9 service-by-service basis"  
10 Do you see that?  
11 A Yes I see that  
12 Q Why can -- why cannot BellSouth suspend  
13 access to LENS on a service-by-service basis?  
14 A I'm not familiar with the restriction I  
15 would be speculating what limitations LENS has The  
16 fact that it's an ordering system -- normally  
17 ordering systems allow you to order all services that  
18 are provided through that system so, in this case  
19 there probably are limitations on how to segment the  
20 services that are appearing on LENS for you to order  
21 and, essentially, stop you from buying or ordering  
22 that particular service  
23 LENS tends to me to be an ordering system  
24 with the ability for you guys -- for the CLPs to order  
25 all the services that you are entitled to order from

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1 us  
2 Q On what do you base your understanding of the  
3 LENS system?  
4 A My overall understanding of applications and  
5 ordering systems is from past experience  
6 Q Have you reviewed any manuals about LENS that  
7 led you to the conclusion that you've given today?  
8 A Not in a lot of detail, no  
9 Q On Lines 15 to 16 on this same page you  
10 state that "BellSouth needs the ability to take the  
11 appropriate correction action through suspension or  
12 termination of the service"  
13 Do you see that  
14 A Yes I see that  
15 Q Could that service be a telecommunication  
16 service?  
17 A Yes it could be a telecommunication service  
18 that you're providing to -- I mean your clients are  
19 providing to their end-users  
20 Q Could service also include access to the LENS  
21 ordering system?  
22 A No The suspension through the LENS system  
23 is what suspension in this case -- and that's on  
24 Line 16 -- refers to Through suspension -- to be  
25 more explicit, all access to the LENS system or

39 (Pages 150 to 153)

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1 termination of the service -- and based on the  
2 language that is in Attachment 7 if you read our  
3 position, it says fifteen calendar days for you to  
4 take action -- for the CLPs to take action. If that's  
5 not -- if they don't comply and there's no action  
6 taken, then on the 30th day we'll cease and have the  
7 right to terminate the service.

8 So that's the normal sequence. It  
9 suspends -- you suspend the access to the ordering  
10 system, and if no action is taken on behalf of the  
11 CLPs to stop the incident, then we reserve the right  
12 to terminate the service -- that specific service. So  
13 it could be one customer that the CLP has, that we  
14 would terminate only that customer's service. Not all  
15 the services for the CLPs, just that particular  
16 service that's creating -- or is the vehicle to do  
17 this unlawful act.

18 Q So Line 16 your use of the word "service"  
19 there refers not to LENS ordering, but to a telecom  
20 service?

21 A Exactly. Termination of that service.

22 Q And the termination would be imposed, if at  
23 all, on an end-user that's engaging in improper  
24 activity?

25 A Yes. We would communicate that to the CLP

1 systems would be suspended.

2 Q And those are all things that could happen if  
3 an end-user did something improper?

4 A And the CLPs took no action within a certain  
5 period of time. In this case, 15 days with no action  
6 -- no evidence of action -- then we would reserve the  
7 right to do this.

8 As I mentioned before, I don't believe, in  
9 the case of your clients, that this has ever happened.  
10 They are two exceptions because, I believe, most  
11 telephone companies understand that these are serious  
12 incidents and that they must have to do something to  
13 correct it. And we would definitely work with them  
14 and work to identify the problem and making sure that  
15 we have enough information to corroborate what we're  
16 telling them that we're finding. And if you read  
17 again some of the examples of what these things are --  
18 listening to Party lines, impersonating people with  
19 fraudulent intent, harassing phone calls -- those are  
20 things that you can probably track.

21 Q Are there other examples of improper activity  
22 that could result in the actions that you've described  
23 earlier?

24 A They're actually off our tariff as well --  
25 our FCC Tariff also has a list of the rest of the

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1 that we would terminate the service if the CLP didn't  
2 take corrective actions to correct it.

3 Q Would suspending service to a Petitioner's  
4 customer have an impact on that Petitioner?

5 A Suspending access to the system where they  
6 order services -- LENS is an ordering system, so my  
7 testimony talks of suspension of LENS access,  
8 therefore the CLP would not have access to order  
9 services.

10 And I read on Attachment 7, there are  
11 other things as well besides that specifically.  
12 Where -- will provide written notice to the other  
13 party, that additional applications for service may be  
14 refused. In that case, if you ask for additional  
15 service we might refuse it. That pending orders for  
16 service may not be completed, and that in the end  
17 access to the ordering system at all -- in total will  
18 be suspended.

19 So if you have -- what I -- what this  
20 implies is that if you have something in the works --  
21 if you already ordered something, an application for  
22 service, we might decide to terminate that  
23 application. In orders pending, I'm sorry, then we  
24 may not let it complete. And then on top of that  
25 the access that the CLPs would have to the ordering

1 examples that could be construed as improper use of  
2 the facilities.

3 Q Is that FCC Tariff No. 1?

4 A I can't remember the exact number, to tell  
5 you the truth.

6 Q Is it your understanding that the list that's  
7 in the tariff is the exhaustive list of anything  
8 someone could do that would result in potential  
9 suspension of service?

10 A I'm not sure it would be a total exhaustive  
11 list, but it should be a fairly complete list of  
12 things that would be construed as illegal use of --  
13 unlawful use of facilities.

14 Q Is there a list anywhere that BellSouth has  
15 created in any form that is an exhaustive list of the  
16 kinds of activity that would result in suspension of  
17 service?

18 A I don't know.

19 Q On Page 12 at Lines 10 to 11, you state that  
20 "Suspension --" and you're referring to LENS  
21 suspension here, -- "would necessarily impact the CLP  
22 on all services."

23 Do you see that?

24 A Yes.

25 Q And what do you mean by "impact the CLP?"



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1 A That the CLP would not be able to order any  
2 services  
3 Q And in your opinion, would that be a positive  
4 impact on the CLP?  
5 MR CULPEPPER Object to the form of  
6 the question  
7 THE WITNESS I would think that it  
8 would not necessarily be a positive impact on the CLP  
9 if they were not able to order services however this  
10 is an instance where we have the right to execute I  
11 mean we have the right to be able to do this We  
12 want to retain the right to be able to do this I  
13 can't emphasize enough that this is something that I  
14 don't believe has ever happened with your clients  
15 This is just a right that we want to reserve to have  
16 to be able to suspend the access to the services in  
17 cases where you -- your clients completely refuse to  
18 take any corrective action  
19 Q (By Ms Joyce) Does BellSouth presently have  
20 the right to take these actions that are provided in  
21 Attachment 7 at Section 1 7 1?  
22 A I don't know if it's in their current  
23 contract, if that's your question  
24 Q Do they have that right presently, vis-a-vis  
25 the Petitioners?

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1 A Yes  
2 Q Does BellSouth compete with the Petitioners?  
3 MR CULPEPPER Object to the form of  
4 the question  
5 THE WITNESS It is a competitive  
6 market and you're providing services that we also  
7 provide So, by default yes, I would have to say  
8 that we compete with the Petitioners  
9 Q (By Ms Joyce) Do you believe that BellSouth  
10 has an understanding of the situation under which it  
11 could have its service impacted?  
12 MR CULPEPPER Object to the form of  
13 the question  
14 THE WITNESS I didn't quite  
15 understand the question  
16 Q (By Ms Joyce) Do you think BellSouth has an  
17 understanding about the situations in which its  
18 service could be suspended?  
19 A Services that somebody provides to BellSouth  
20 or services that BellSouth provides to other people?  
21 Services that BellSouth provides to CLPs?  
22 Q Let me phrase it this way Do you know  
23 whether BellSouth has an understanding about the  
24 situations in which its ability to provide service  
25 could be suspended?

1 MR CULPEPPER Object to the form of  
2 the question  
3 THE WITNESS I'm sorry I'm not --  
4 if you could give me an example, maybe I'd understand  
5 what you're trying to ask me I think I already  
6 mentioned that in the case of BellSouth suspending  
7 access to the CLPs, these are pretty straight-forward  
8 reasons We will retain the right to refuse access to  
9 LENS and terminate services, but it's not going to be  
10 without having discussed that with the CLPs making  
11 sure they understand what's happening, making sure  
12 they have enough time to take corrective action, and  
13 letting us know This is something that is bad for  
14 both of us, for the CLPs as well as BellSouth to allow  
15 this to happen in their communication links We're  
16 going to work with the CLPs to make sure that this  
17 doesn't happen If it happens, then we want to have  
18 the right to suspend access to the CLPs -- access to  
19 our ordering system to continue ordering services  
20 unless corrective action is taken  
21 Q When you began your answer, you asked me to  
22 give you an example so I'm going to try to do that  
23 A Okay  
24 Q Do you think BellSouth has an understanding  
25 that, "If we do this, our network will shut down?"

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1 A If we suspend access to a CLP?  
2 Q No Let me rephrase  
3 Do you think BellSouth has an idea about  
4 "If we engage in this particular type of activity --  
5 not with a CLP but if we do something like this, our  
6 network could shut down"  
7 Do you think BellSouth has a list of  
8 things that it knows that if it does these things the  
9 network could shut down?  
10 MR CULPEPPER Object to the form of  
11 the question  
12 THE WITNESS If one of our  
13 end-users -- not a CLP but one of our end-users is  
14 engaging in these activities, we have the right to  
15 terminate the services if they don't correct it So  
16 we would terminate the service to someone who was  
17 using our communications links to conduct harassing  
18 phone calls, to use profane language and obscene  
19 language to threaten people on the phone If they  
20 don't take action -- if we can't convince that  
21 end-user to stop doing those, we would terminate their  
22 service, yes  
23 Q (By Ms Joyce) In that answer, are you  
24 referring to a BellSouth end-user?  
25 A Yes

41 (Pages 158 to 161)

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1 Q I direct your attention to Exhibit 4 which  
2 is your November 19th testimony  
3 A Okay  
4 Q Page 10 You state that, "The Petitioner  
5 suggests that if they disagree with BellSouth's  
6 notice, they can continue to engage in the improper  
7 action until the state commission rules which could  
8 be a year later "  
9 Do you see that  
10 A Yes I see that  
11 Q Where do the Petitioners make that  
12 suggestion?  
13 A I believe my quote on Line 14 -- starts on  
14 Line 14 "Petitioners say at Page 107 that such  
15 suspension or termination should not be imposed  
16 unilaterally by one party over the other's written  
17 objections to or denial of such accusations "  
18 So that's what I was referring to, their  
19 statement saying that I should not -- or BellSouth  
20 should not impose, unilaterally these types of  
21 activity I assume they were if I'm remembering  
22 correctly, referring to suspension of access and  
23 termination of service If there is -- the other  
24 party in this case you -- your clients -- the CLPs  
25 have no written objections or denials to such

1 A On my experience and the experience of other  
2 people in our groups that when there have been billing  
3 disputes or complaints that go to a commission by the  
4 time a commission actually hears the case, it's  
5 normally over a year long  
6 You were asking me earlier about one of my  
7 billing disputes participation, and you asked me  
8 approximate dates Well, I believe I mentioned in the  
9 summer of last year is when the dispute went in to the  
10 commission, and the hearing was in October of this  
11 year That's over a year's time So, that was -- if  
12 you want more specific information Also based on  
13 the experience of our groups in terms of disputes that  
14 go up to commissions, it could be a lengthy process  
15 Q Normally a year, I think was your testimony?  
16 A It could be a year, which could be a year  
17 later  
18 Q I think just now you said that it normally --  
19 in your experience, it's normally a year  
20 A In the case I just described to you it took  
21 over a year for the commission to hear that case I  
22 assume it could take shorter or longer  
23 Q Could you please turn to your Exhibit 4,  
24 which is your November 19th testimony before the  
25 Tennessee Regulatory Authority

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Page 165

1 accusations  
2 Q You take the language that you quote at Lines  
3 14 to 17, that the Petitioners seek to engage in  
4 improper actions?  
5 A No I said they can continue to engage in  
6 improper action I'm not saying that they would, but  
7 they could continue to do that  
8 Q And just to be clear with what you've stated  
9 at Lines 21 to 23, to what does the clause, "Which  
10 could be a year later," refer in this sentence?  
11 A I believe that refers to the fact that if it  
12 goes to some sort of dispute resolution or a  
13 commission it could take up to a year later for the  
14 commission to rule on whether it was right or wrong  
15 for us to do what we did, suspend or terminate  
16 services And in that interim, the potential act  
17 could continue  
18 Q BellSouth would allow Petitioners engage in  
19 improper actions for a year?  
20 MR CULPEPPER Object to the --  
21 THE WITNESS No we wouldn't We  
22 reserve the right to suspend access to the service  
23 the LENS, and to terminate service  
24 Q (By Ms Joyce) On what do you base your  
25 estimation that a commission ruling could take a year?

1 A Okay  
2 Q Exhibit 4  
3 A Yes  
4 Q At Page 12 at Lines 13 to 14 I'll begin  
5 with Line 12  
6 A Okay  
7 Q You state "In the event that the parties are  
8 unable to reach an amicable solution to curb the  
9 activity, the CLEC may file a complaint at the  
10 Commission "  
11 Do you see that  
12 A Yes  
13 Q Is this testimony provided for Issue 7-6?  
14 A 7-5, you mean?  
15 Q I'm sorry, 7-5 Is that for 7-5?  
16 A Yes  
17 Q Could the CLEC's complaint take a year in  
18 that instance?  
19 A Potentially, yes  
20 MS JOYCE I think it's a good time  
21 to break  
22 (Short recess had off the record from  
23 2 15 p m to 2 29 p m )  
24 Q (By Ms Joyce) Mr Morillo I direct your  
25 attention to Exhibit 3 which is your November 12th

42 (Pages 162 to 165)

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1 testimony  
2 A Okay  
3 Q Page 12  
4 A All right  
5 Q Bottom of the page Lines 24 to 25 states  
6 "If the CLP receives a notice of suspension or  
7 termination from BellSouth as a result of the CLP's  
8 failure to pay timely "  
9 Do you see that?  
10 A Yes I see that  
11 Q What do you mean by "timely" here?  
12 A Before the next due date Suspension notices  
13 are generated if no payment has been received in  
14 available funds by the next -- the start of the next  
15 billing cycle So in our earlier case, if we -- to  
16 give you the example, from the first of the month to  
17 the end of the month that would mean that the first  
18 of the following month if I had not received payment  
19 for the prior month, the system generates an automatic  
20 suspension notification that goes out to the CLPs  
21 Q And what does a notice of suspension say on  
22 it?  
23 A How -- it stipulates how much time there is  
24 to pay the amount due That's what it says, that if  
25 you don't pay this then eventually you'll get

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1 terminated You'll get another notice if you haven't  
2 paid by that period of time, normally 15 days, telling  
3 you that within 30 days, your service will be  
4 terminated  
5 Q Will the notice state the amount that has to  
6 be paid?  
7 A Yes  
8 Q So tell me if I have this right On the 15th  
9 day into a billing cycle and BellSouth hasn't been  
10 paid for the previous cycle --  
11 A Right  
12 Q -- an automatic notice is issued, is that  
13 right?  
14 A (Witness nods head)  
15 Q And that automatic notice says, "Please pay  
16 this amount within 30 days " Do I have that right?  
17 A Within 15 days I believe they give them 15  
18 days to pay If by that time, no payment has been  
19 received then a subsequent notice will be sent  
20 indicating that, I believe, within 30 days your  
21 services will be terminated So if you add all those  
22 days -- 30 days of services that you didn't pay, then  
23 15 days for the first notice, and then an additional  
24 30 days for the termination notice So a total of  
25 about 74, 75 days, right?

1 Q Thirty plus fifteen plus thirty?  
2 A Yes  
3 Q If the CLP pays the amount noted on the  
4 notice of suspension within 15 days of receiving the  
5 notice, will the CLP avoid suspension of services?  
6 A Yes  
7 Q Will you please pick up Exhibit 9, which is  
8 Attachment 7 to the Agreement, and look at Page 9  
9 A Okay  
10 Q It begins on Page 8 -- on the bottom of  
11 Page 8?  
12 A Okay  
13 Q It says 1 7 2  
14 A Yes  
15 Q Is this the section that's in dispute in this  
16 issue which is 7-6?  
17 A Yes  
18 Q On Page 9 do you see a BellSouth version  
19 with some text?  
20 A Yes  
21 Q And that indicates this is BellSouth's offer  
22 to the Petitioners in this case?  
23 A Yes  
24 Q I direct your attention to verbiage in this  
25 paragraph that has been bolded about half way down in

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1 the paragraph, that begins "And all other amounts "  
2 Do you see that?  
3 A Yes  
4 Q It states that "If payments of such  
5 amounts," and in bold, "and all other amounts not in  
6 dispute that become past due before refusal,  
7 incomplection or suspension "  
8 Do you see that?  
9 A Yes, I see that  
10 Q What are the -- what are "all other amounts  
11 not in dispute that become past due?" What are those  
12 amounts?  
13 A In these cases as I was trying to give you  
14 an example earlier most of the CLPs have more than  
15 one billing cycle So if the first billing cycle  
16 begins on the first of the month and the second  
17 billing cycle is on the 10th of the month and the  
18 third billing cycle is on the 20th of the month, and  
19 there are past due amounts as well that's what this  
20 refers to "If all other amounts not in dispute that  
21 become past before refusal, incomplection or  
22 suspension is not received by the 15th calendar day  
23 following the date of the notice " That's what those  
24 referring amounts are, other amounts that have become  
25 past due between the time the suspension is

43 (Pages 166 to 169)

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1 automatically generated and the time that the  
2 suspension expires 15 days later. With that period of  
3 time, if anything else becomes due, then those are the  
4 other amounts.

5 Q: Is the past due period beginning on the 31st  
6 day after a bill is issued to a CLP?

7 A: If your billing cycle goes from the first of  
8 the month to the end of the month -- so, yes, the  
9 first day after that, it's past due.

10 Q: So on a 30-day billing cycle, the 31st day  
11 after a bill date you haven't paid, you're past due?

12 A: Yes.

13 Q: And this language that's in bold here in  
14 Section 17.2, does this apply in any other  
15 circumstances other than when a CLP has several  
16 billing cycles going at the same time?

17 A: That would be the circumstances that would  
18 generate other past due amounts. I can't think of  
19 other instances where the CLP would have additional  
20 amounts due. I can't think of one right now, but most  
21 of the times -- when I read this, I read in that  
22 context, that you're going to have multiple things due  
23 throughout a month because you have multiple billing  
24 cycles. And if one notice has a window of time of 15  
25 days, and within those 15 days then you're still past

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1 due -- you become past due in another invoice, then  
2 that bolded text is referring to those amounts that  
3 become past due while we wait.

4 Q: Is a notice of suspension issued on the 15th  
5 day into a past due period? Do I have that right?

6 A: No. The notice of suspension is sent the day  
7 after the bill becomes past due, and it's for a period  
8 of 15 days.

9 Q: Is it issued on the 31st day after the bill  
10 date if no payment has been provided?

11 A: Yes.

12 Q: By what means are notices of suspension sent  
13 to a CLP?

14 A: Electronically and by post.

15 Q: Must a CLP request to receive notices of  
16 suspension electronically?

17 A: I believe that depending on the system, the  
18 application is generated from, then you would generate  
19 one automatically and the other one more of a manual  
20 process posting.

21 Q: So, electronic transmittal is not the  
22 default?

23 A: For the IBS system, for the CABS billing  
24 system, I think the process is more manual and the  
25 notice is generated manually.

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1 Q: What does it mean that the notice is  
2 processed manually?

3 A: That instead of the program -- the computer  
4 generated automatically because no payment was posted  
5 to, I guess, the accounts receivable system, then the  
6 system would generate it.

7 In the other case, the system doesn't have  
8 the ability to do that, so there will be a flag and  
9 somebody will manually generate the notice. So, one  
10 is automatically generated by a system. The other one  
11 is more manually generated by a human.

12 Q: Just to be clear, which is automatically  
13 generated?

14 A: The IBS.

15 Q: The initial bill is automatically generated?

16 A: The notice is automatically generated.

17 Q: Are you referring here to Page 13 of your  
18 testimony, "For IBS billed services"?

19 A: Right. And Page 14, "For CABS billed  
20 services."

21 Q: And is this what you mean at Lines 10 to 12,  
22 "That CABS billed services," and I paraphrase, "The  
23 treatment process is more manual."

24 A: Exactly.

25 Q: Are IBS notices and CABS notices sent at the

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1 same time to that CLP that hasn't paid?

2 A: Yes, it generates on that first day after the  
3 billing cycle and billing period ends.

4 Q: Your testimony at Page 12, beginning at  
5 Line 25 of Exhibit 3, "The CLP should be required to  
6 pay all amounts that are past due as of the date of  
7 the pending suspension or termination action."

8 Do you see that?

9 A: Yes.

10 Q: Is it your understanding that that testimony  
11 captures the language that's in bold in BellSouth's  
12 version of Section 17.2? And by "captures" I mean  
13 fairly summarizes.

14 A: Yes. They should pay all amounts that are  
15 past due.

16 Q: And does that regard the situation where the  
17 CLP has multiple billing cycles and past due amounts  
18 that accrue that should all be paid?

19 A: Yes.

20 Q: At Page 13 of your November 12 testimony  
21 which is Exhibit 3 --

22 A: Okay.

23 Q: -- you discuss at Lines 7 to 8 that "Once in  
24 collections, the risk associated with the customer is  
25 higher, based on the customer's own behavior."

44 (Pages 170 to 173)

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1 Do you see that?  
2 A Yes. I see that  
3 Q Why is the risk higher?  
4 A In this case, if the customer has not paid by  
5 the due date, the fact that I have to send a notice of  
6 suspension increases the risk. So, if the customer  
7 doesn't take any action in those 15 days that we  
8 provide them to pay -- essentially, if they don't  
9 within 15 days, then the risk increases even further  
10 because they haven't paid.  
11 Q What is the risk that you're referring to?  
12 A Financial risk. The risk of not collecting  
13 for services rendered.  
14 Q And by customer, are you referring to a CLP?  
15 A A CLP.  
16 Q Do you know whether this same policy that's  
17 articulated in your testimony for Issue 7-6 applies to  
18 BellSouth regional customers?  
19 A I don't know. I know that as a customer in a  
20 residential area -- so, a retail customer that I am,  
21 I'm given the same types of notices. I just -- I  
22 haven't really received one, so I can't tell you  
23 whether it's 15 days because I pay on time and  
24 electronically.  
25 Q So you don't know whether the same policy

1 A It applies to a CLP that has one or multiple  
2 billing cycles.  
3 Q Is it ever the case that a CLP that has  
4 multiple billing cycles would receive one notice that  
5 states the full amount that is due in order to avoid  
6 suspension?  
7 A The CLPs receive suspension notices based on  
8 their billing due dates. So, as I mentioned earlier,  
9 if they receive -- if they have three billing cycles  
10 and they are equally spaced throughout the month -- on  
11 the 1st, the 10th and then the 20th of the month --  
12 then each one of those billing cycles could  
13 potentially generate a notice if the CLP doesn't pay  
14 on time at all for that month. So that CLP could  
15 potentially receive three notices for suspension.  
16 Q If it failed -- if the CLP fails to pay in  
17 all three of its billing cycles during the allotted  
18 time, how many notices of suspension would the CLP  
19 receive?  
20 A If the CLP fails to pay the notices -- by the  
21 notice's due date -- so, every -- 15 days after they  
22 receive the notice?  
23 Q No. A billing cycle is 30 days.  
24 A Correct.  
25 Q And in the example that we're discussing, a

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1 applies?  
2 A I know there's a policy for retail customers,  
3 that there would be suspension of service and  
4 potential termination of service. I just don't know  
5 about the 15 days, but I would assume the policy is  
6 very similar, if not the same.  
7 Q On Page 14 of your testimony in Exhibit 3,  
8 you state at Lines 7 to 8, "BellSouth would not  
9 disconnect a customer if payment were made for all  
10 amounts for which a notice has been sent."  
11 Do you see that?  
12 A Yes. I see that.  
13 Q Does the customer in this sentence regard --  
14 or refer to a CLP?  
15 A Yes.  
16 Q Is it ever the case that one notice will  
17 state the full amount of all payments that are due?  
18 A I guess in that case, it would be if the CLP  
19 only had one billing cycle worth of information, the  
20 notice would explicitly stipulate all the payments  
21 that were due based on that notice.  
22 Q In a multiple billing -- strike that.  
23 Does the language that is in bold in  
24 BellSouth's proposal for Section 17.2 apply to a CLP  
25 that has only one billing cycle?

1 CLP would have three billing cycles.  
2 A Okay.  
3 Q In all three billing cycles, they fail to pay  
4 in 30 days.  
5 A Right. So they would receive three notices.  
6 Q And if that same CLP with the three billing  
7 cycles failed to pay within 15 days of receiving each  
8 notice of suspension, would they receive additional  
9 notices?  
10 A Yes. The next notice would be a notice of  
11 termination that would allow them to have 30 days to  
12 pay before I terminate their services.  
13 Q How many additional notices would that CLP  
14 receive?  
15 A In that case, there would be -- if they  
16 failed to pay, even after we gave them an additional  
17 15 days to pay, there would be three notices generated  
18 for termination of services.  
19 Q So in that scenario, failure to pay in 30  
20 days, fail to pay 15 days after the first notice of  
21 suspension, how many notices would the CLP receive?  
22 A Three times three -- I mean, three plus three  
23 is six.  
24 Q Does BellSouth ever consolidate multiple  
25 notices of suspension into one notice?

45 (Pages 174 to 177)

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1 A As I mentioned before, on the IBS system, the  
2 notices are generated automatically. So in that  
3 case, no, the notices would be generated for every  
4 billing cycle that we did not receive payment for.  
5 And for CABS -- in the case for CABS  
6 since we're generating, manually, the notices and then  
7 they would get the notices and at the same time in  
8 the case of CABS, we would ask them to pay on all  
9 amounts due before suspension.

10 Q On Page 14 of Exhibit 3, which is your  
11 November 12 testimony, at Lines 3 to 4, there's a  
12 statement, "If, however, the customer does not comply  
13 and access to ordering systems is denied."

14 Do you see that?

15 A Yes, I see that.

16 Q Under what circumstances would access to  
17 ordering systems be denied?

18 A If the CLP fails to pay within those 15 days.

19 Q At Line 6, you begin, "the process for  
20 disconnection of service would work in a similar  
21 manner."

22 Do you see that?

23 A Yes.

24 Q And what do you mean by "disconnection of  
25 service?"

1 A Right. The billing team in charge of the  
2 account would be monitoring the situation until the  
3 last day before they actually discontinued the service  
4 -- disconnect the service. So, they would be -- it  
5 would be a task that would have to be monitored very  
6 closely. It's a very serious thing to do.

7 Q Which types of personnel would perform the  
8 task of suspending a CLP's access to ordering systems?

9 A What do you mean, what types of personnel? A  
10 clerk or --

11 Q Which division of BellSouth would they work  
12 in?

13 A I would think they would work with some sort  
14 of account receivable function, the one that's  
15 tracking receipt of payment, and those people would  
16 communicate with the actual person or persons that  
17 would discontinue access.

18 Q Would the --

19 A But the flag, in this case, is no payment  
20 received. There's a system that knows no payment was  
21 received. The accounting might be involved to make  
22 sure that they have a chance to contact the CLP and  
23 then the suspension would ensue.

24 Q Does the account receivable person instruct  
25 the technical person to implement the suspension?

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1 A If the CLP doesn't pay within the 15 days,  
2 then a notice would be sent, and within 30 days, the  
3 service would be disconnected.

4 Q Do these results happen sequentially or at  
5 the same time?

6 A You get the suspension notice, you have 15  
7 days to abide by the suspension notice. If no action  
8 on the part of the CLP occurs, then you have 30 days  
9 for payment before the service is terminated.

10 Q Do you also have 30 days before access to  
11 ordering systems is denied?

12 A No, the access to the ordering system would  
13 be stopped at the 15th day.

14 Q When BellSouth suspends a CLP's access to  
15 ordering systems, does that occur automatically?

16 A Do you mean that the systems that decide to  
17 terminate or suspend access automatically are linked  
18 to someone else, or automatically that a person  
19 actually requests the system access to be  
20 discontinued? If it's the latter, yes, it would be  
21 the latter. Somebody would have to request the access  
22 to be discontinued.

23 Q Would somebody have to request for the  
24 service be disconnected at the subsequent time if CLP  
25 didn't pay?

1 A I would assume that that would be reasonable  
2 steps to take, yes.

3 Q Does BellSouth have a policy that the account  
4 receivable person should call the effected CLP before  
5 implementing that decision?

6 MR CULPEPPER: Object to the form of  
7 the question.

8 THE WITNESS: I don't believe an  
9 accounts receivable group would call the CLP. I  
10 believe they would probably contact the account team  
11 -- executive team that handles the account to let them  
12 know they're about to do that.

13 Q (By Ms. Joyce) They would call the BellSouth  
14 personnel that deals with the CLP?

15 A Exactly.

16 Q And what type of BellSouth personnel would  
17 perform the task of disconnecting the CLP's service?

18 A I would assume somebody that has access to  
19 the systems. Some sort of technical person that would  
20 be able to disconnect or disable the access for the  
21 CLP. I don't -- if you're asking me specifically what  
22 group that person resides in, I don't know.

23 (Telephone connection lost.)

24 MS JOYCE: Off the record.

25 (Short recess had off the record from

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1 2 56 p m to 2 57 p m )  
2 MS JOYCE Let's go back on the  
3 record  
4 Q (By Ms Joyce) Would accounts receivable  
5 personnel contact the technical employee and tell that  
6 person to disconnect the service?  
7 A Yes They would have to contact somebody  
8 that would actually execute the disconnecting of the  
9 service  
10 Q Do you expect that the accounts receivable  
11 personnel would speak with the BellSouth account team  
12 for the affected CLP?  
13 A I would most certainly think so, yes There  
14 would be close communication at the suspension  
15 notice's time and at the disconnection time to make  
16 sure that we're engaged with the CLP and that we're  
17 trying to make some sort of solution/resolution before  
18 we discontinue providing services to them  
19 Q Do you know whether or not BellSouth has a  
20 policy that the account receivable person must call  
21 the CLP account representative?  
22 MR CULPEPPER Object to the form of  
23 the question  
24 THE WITNESS I don't know the  
25 specific policy I understand that the account team

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1 is in constant communication with the CLP before  
2 disconnection, trying to resolve whatever issue that  
3 it is, in this case nonpayment, before the actual  
4 disconnection occurs  
5 Q (By Ms Joyce) How do you know that?  
6 A Because I've been exposed to one case -- to  
7 one case so far, where I noticed that a CLP took the  
8 entire 74 days to pay the account And I participated  
9 -- I was the recipient indirectly in some  
10 communications that the account team had the with the  
11 billings team to make sure that the payment had been  
12 received or not received at the last minute  
13 Q Do you think that situation that you were  
14 involved in was typical of CLEC's billing events with  
15 BellSouth?  
16 MR CULPEPPER Object to the form of  
17 the question  
18 THE WITNESS I would think so I  
19 mean, that -- we don't necessarily want to lose  
20 customers We want to be able to service our  
21 customers and we will go to extreme lengths to make  
22 sure that they can pay their bills And to the extent  
23 that we have to make some sort of arrangement for them  
24 to pay their bills, we'd probably engage them in that  
25 So, we're not here to unilaterally turn

1 off customers We're going to try to work with our  
2 customers to make sure that they pay on time and that  
3 they receive the services that they're buying from us  
4 So, there's communication with our customers  
5 Q (By Ms Joyce) What is a treatment letter?  
6 A It's the collection letter that is generated  
7 It's the same thing, I think -- it's analogous to the  
8 suspension notice  
9 Q Is it the same as a suspension notice?  
10 A The system generates the suspension notice  
11 I think internally in our company, we might be  
12 referring to it as a treatment letter That goes --  
13 it's the first notice that goes out indicating that  
14 the person, that the company, that the CLP did not pay  
15 on time Therefore it is transferred to collections  
16 for treatment  
17 But the trigger is that automatic notice  
18 that goes to a CLP saying "You're late You didn't  
19 pay You have 15 days before we suspend " And that's  
20 the beginning of treatment from a collections point of  
21 view  
22 Q A treatment letter is something a CLP would  
23 receive?  
24 A The CLP would receive the suspension notice  
25 Q I refer you -- in your Exhibit 3 your

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1 November 12th testimony at Page 13 At lines 23 to  
2 24, you state, "BellSouth sends a treatment letter  
3 requiring the customer to pay a certain past due  
4 amount or lose access to BellSouth ordering systems "  
5 Do you see that?  
6 A Yes, I see that  
7 Q Does this statement mean that BellSouth sends  
8 those treatment letters to the customers?  
9 A As I mentioned a few minutes ago, the  
10 treatment letter is analogous It's a suspension  
11 notice which is what that statement refers to If  
12 the customer is past due and BellSouth sends a  
13 treatment letter requiring the customer to pay for  
14 certain past due amounts or lose access to an ordering  
15 system, then that's the suspension notice that I'm --  
16 we've been discussing at length for the past few  
17 minutes It's a notice I'm going to send to the CLP,  
18 telling them they have 15 days to pay before I  
19 suspend access to the ordering system  
20 Q What I'm hanging up on is that you've used  
21 the word analogous Is a treatment letter analogous  
22 to a notice of suspension or is it the same thing?  
23 A It's the same thing In your case, it's the  
24 same thing A suspension notice is the notice that  
25 the CLP will receive telling them they have 15 days to

47 (Pages 182 to 185)

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1 pay this amount Otherwise I will suspend access to  
2 the ordering system

3 Q Does BellSouth modify the CABS system from  
4 time to time?

5 MR CULPEPPER Object to the form of  
6 the question?

7 THE WITNESS Yes when he needs to  
8 for whatever reason That enhancement that needs to  
9 be made to the billing systems, they do

10 Q (By Ms Joyce) At Page 13 of Exhibit 4 which  
11 is your November 19th testimony -- do you have that  
12 page?

13 A Page 13 of Exhibit 4, yes

14 Q Lines 13 to 16, states that, "BellSouth is  
15 continuing to provide service to the CLEC and any  
16 additional payments that become past due subsequent to  
17 the first notice should be rectified by the CLEC at  
18 the same time that it pays for the original past due  
19 charges "

20 Do you see that?

21 A Yes I see that

22 Q What do you mean by the phrase, "it should be  
23 rectified by the CLEC," in that sentence?

24 A It should be paid

25 Q Rectified means paid here?

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1 A Yes

2 Q In the event of a notice that -- or a  
3 situation where a CLP owes money for a CABS-billed  
4 services, you've stated that the first notice is  
5 issued manually Is a second notice issued for those  
6 CABS services?

7 A If they need to be, yes, they're issued  
8 manually If there are multiple notices they will be  
9 issued manually depending on what billing cycle those  
10 notices are for

11 Q So referring to your Exhibit 3 which is  
12 your November 12th testimony, on Page 14 -- beginning  
13 at Line 12 on Page 14

14 A Okay

15 Q Your testimony states that, "If a notice is  
16 sent to a customer for past due balances, and during  
17 that treatment process, additional payments become  
18 past due BellSouth will require the customer to pay  
19 the amount on the notice, plus any additional amounts  
20 that have become past due in order to avoid suspension  
21 or termination of services "

22 Do you see that?

23 A Yes I see that

24 Q Will all of the amounts due in this scenario  
25 be stated to the CLP in the notice?

1 A If I sent the CLP a notice on the 10th of the  
2 month from CABS because they failed to pay on time, and  
3 by the time I generate the notice -- which could be,  
4 in this case, a few days because it's manually  
5 generated It's not automatic I have to collect  
6 that information -- there's additional amounts due  
7 which implies that another billing cycle just ended  
8 and we still didn't receive payment right so I would  
9 require that the CLP is to pay for the first notice  
10 and that he also pay the amount of that potential  
11 second notice that they received So, if you receive  
12 a notice that was generated on the 10th of the month  
13 and the next billing cycle you have is the 20th of the  
14 month -- so 10 plus 5 plus 15 is 25 days So the  
15 25th of the month is when you would have to pay that  
16 first notice before the suspension But on the 20th,  
17 I generate a second notice in case you haven't paid  
18 for that billing cycle

19 Q A different billing cycle?

20 A Right So you're within those 15 days

21 Then, when you pay for the first notice that I sent to  
22 you, you must also pay for the amount of the second  
23 notice that I sent you, because I don't have the  
24 ability to send you automatic notices fast enough for  
25 me to recuperate and reduce my risk of nonpayment

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1 Q Let me just make sure that I understand you  
2 clearly In that scenario you described, there are  
3 two billing cycles

4 A Right

5 Q One of them BellSouth issues a notice of  
6 suspension on the 10th of the month?

7 A Right

8 Q Under the policy, BellSouth -- that your  
9 testimony speaks of, payment would be due on the 25th  
10 Do I have that right?

11 A Before suspension right

12 Q Then there's a second billing cycle and  
13 BellSouth issues a notice of suspension on the 20th of  
14 that billing cycle

15 A Right

16 Q Payment, with respect to the second billing  
17 cycle after receiving the notice, is due 15 days after  
18 that?

19 A In this case, you would have to pay for both  
20 when you pay for the -- on the 25th

21 Q And this is in CABS, which is a --

22 A Exactly

23 Q -- which is a manual notice process?

24 A Exactly

25 Q What if the two billing cycles went thus



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1 BellSouth sent a notice of suspension -- the first  
2 notice of suspension on the 10th and a second notice  
3 of suspension on the 24th for the second billing  
4 cycle. When must the CLP pay both of those notices?  
5 A On the 25th. The CLPs know that they're  
6 late. They didn't pay their bills. They generate --  
7 we have to generate notices of suspension on those  
8 dates that you mentioned in your example, but they've  
9 known that they haven't paid their bills. At that  
10 point in time, you know, they're 15 days late. That's  
11 why we generate, you know -- at the first notice,  
12 they're already 15 days from paying. And on -- in  
13 your example of the 24th, they know that their billing  
14 cycle ends on the 24th. They've probably received the  
15 bill and they haven't paid it.  
16 Q And on that grounds, you believe that the CLP  
17 knows it hasn't paid.  
18 MR CULPEPPER Object to the form of  
19 the question.  
20 THE WITNESS We send them bills on a  
21 regular basis. They know when the bills arrive. And  
22 if they review the bills and dispute parts of it --  
23 then those parts are in dispute, but otherwise, they  
24 know that the bills are due on a certain day and  
25 payment is expected on a certain day. Otherwise, they

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1 would receive a notice.  
2 So they control whether or not they get  
3 suspension -- termination notices, because if they  
4 paid on time, they wouldn't receive either one.  
5 Q (By Ms. Joyce) And by "on time" you mean 30  
6 days after the bill date?  
7 A Yes.  
8 Q Do you know whether there's anything that  
9 prohibits BellSouth from terminating service to a CLP?  
10 MR CULPEPPER Object to the form of  
11 the question.  
12 THE WITNESS What grounds? What  
13 basis? I don't understand your question. Are we  
14 still talking about nonpayment?  
15 Q (By Ms. Joyce) In a general sense, is there  
16 anything that prohibits BellSouth from terminating  
17 service to a CLP?  
18 A I'm not aware -- I don't think I understand  
19 your question. If you are saying there are laws that  
20 prohibit BellSouth from terminating service to a  
21 CLP -- is that your question? Or is there any  
22 business policies that keep BellSouth from terminating  
23 service to a CLP? I'm not certain which -- what's  
24 your question.  
25 Q We can begin with is there a law that

1 prohibits BellSouth from terminating service to a CLP?  
2 MR CULPEPPER Object to the form of  
3 the question.  
4 THE WITNESS I don't know if there  
5 are laws. In terms of this contract that we are  
6 arbitrating, I have the right to terminate service to  
7 -- our company has the right to terminate services to  
8 CLPs for nonpayment or, what we were discussing a  
9 little earlier, not taking corrective actions to stop  
10 fraudulent use of the facilities. Those are instances  
11 where I would be able to terminate service to a CLP  
12 specific to the testimony that I have provided you.  
13 Whether there are other instances that I might not be  
14 familiar with or are not part of my testimony, I don't  
15 know.  
16 Q (By Ms. Joyce) Is there any law that  
17 restricts the grounds for which BellSouth can  
18 terminate service to a CLP?  
19 MR CULPEPPER Object to the form of  
20 the question.  
21 THE WITNESS I don't believe I  
22 understand your question.  
23 Q (By Ms. Joyce) What don't you understand  
24 about it?  
25 A Are you asking me whether there are laws that

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1 prohibit -- I'm not -- I don't know. I'm not an  
2 attorney, so I don't know whether there are laws that  
3 prohibit BellSouth from terminating services.  
4 In terms of this contract and my  
5 testimony, there are certain cases where I have the  
6 right to terminate service to a customer, for  
7 nonpayment, for misuse of the facilities.  
8 Q Mr. Morillo, what is your background with  
9 respect to CLEC's billing deposits?  
10 A I discussed the topic with the folks that I  
11 mentioned earlier -- specifically, Sandra Cetti -- to  
12 understand the specific -- our policies. And now I  
13 understand what deposits are in the case of a consumer  
14 because I pay deposits for services that sometimes I  
15 buy, so I understand what deposits are. In  
16 particular, in this case I knew about the deposits. I  
17 was able to communicate with our credit group and  
18 better understand the CLP's deposits and more detail  
19 on our specific policies for the CLPs.  
20 Q Ms. Cetti works in the credit group?  
21 A Credit group, yes.  
22 Q On Page 14 of Exhibit 3, which is your  
23 November 12th testimony, beginning at Line 23 --  
24 Do you see that?  
25 A Yes, I do.

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1 Q You state that "It is BellSouth's position  
2 that the average of two (2) months' of actual billing  
3 for existing customers or estimated billing for new  
4 customers should be used to determine the maximum  
5 amount of the deposit "  
6 Do you see that?  
7 A Yes I see that  
8 Q And when you refer to "actual billing for  
9 existing customers," which customers are you referring  
10 to?  
11 A CLPs that we are already providing service  
12 to  
13 Q And when you use the phrase, "estimated  
14 billing for new customers " who are the customers that  
15 you're referring to?  
16 A Customers that are not part of our customer  
17 base but will potentially be future customers of our  
18 company that we're about to engage in a business  
19 relationship to provide services But they're  
20 nonexistent right now They're not our customers  
21 Q Would they be CLP customers? Would the  
22 customers be CLPs?  
23 A Well, the potential customers, yeah, in this  
24 case would be CLPs, yes  
25 Q You're not referring to retail customers?

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1 A No, I'm referring to CLPs here  
2 Q On Page 15 of Exhibit 3, beginning at  
3 Line 12, you state "BellSouth's policy of requiring a  
4 deposit of no more than two months of a CLP's  
5 estimated billings is consistent with industry  
6 standards "  
7 Do you see that?  
8 A Yes, I do  
9 Q Which industry standard is that policy  
10 consistent with?  
11 A It's consistent with what most  
12 telecommunications companies in our national regions  
13 require including your clients, which require, I  
14 believe, two-and-a-half months on average A deposit  
15 for customers is consistent with other utilities that  
16 require deposits  
17 Q Have you done research as to what the deposit  
18 policies are for other utilities?  
19 A Yes I've -- we've looked at what the deposit  
20 policies were for a gas company and various other  
21 utilities types of companies  
22 Q And on Page 15 beginning at Line 16, you  
23 state that, "BellSouth is simply using sound business  
24 criteria for determining the credit risk of our  
25 customers to protect the company from excessive bad

1 debt "  
2 Do you see that?  
3 A Yes, I see that  
4 Q Which sound business criteria are you  
5 referring to there?  
6 A We use independent sources that evaluate the  
7 credit-worthiness of customers We look at the  
8 financial information that in this case, CLPs provide  
9 to us to make an assessment of their credit  
10 worthiness And to the extent that we sometimes have  
11 relationships with those companies, we'll also look at  
12 that as also another variable to see the policies that  
13 we should ask the CLP to provide to us  
14 Q Did BellSouth derive these criterium?  
15 A Well the external sources are, like Dun &  
16 Bradstreet -- information like that that we all have  
17 access to We use that information to determine the  
18 credit worthiness of a company and as an independent  
19 source And it is my understanding of the source that  
20 they look at the CLP in this case in a more wholistic  
21 manner in how they pay their suppliers overall And  
22 they rank and rate in this case CLPs, and their  
23 credit worthiness is based on their payment histories.  
24 I guess, with other people and whether there is  
25 financial information in the case that the company

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1 might be in bankruptcy A lot of the things that they  
2 look at -- they will assign a score, and we use those  
3 scores And, again, we use the information that the  
4 CLPs normally provide to us when we ask them regarding  
5 financials  
6 Q On Page 16 of Exhibit 3 -- if you could  
7 please turn to that Beginning at Line 4, you state,  
8 "During the last two years, however, a very large  
9 number of BellSouth's customers have made timely  
10 payments up until the day they filed bankruptcy "  
11 Do you see that?  
12 A Yes I do  
13 Q Are you referring to CLPs in this sentence?  
14 A Yes And for example I believe on Line 11  
15 through 13 -- through 12 I mention a couple of them,  
16 WorldCom Adelphia Cable and Wireless and Global  
17 Crossing -- where CLPs there were paying on time yet  
18 filed for bankruptcy  
19 Q Did BellSouth never receive payment for  
20 services rendered to these companies after they filed  
21 for bankruptcy?  
22 MR CULPEPPER Object to the form of  
23 the question  
24 THE WITNESS I'm not familiar with  
25 the cases to see when and if we got payments We had

50 (Pages 194 to 197)

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1 deposits in the cases of those companies  
2 Q (By Ms Joyce) Do you know how the bankruptcy  
3 process works?  
4 A No. I don't  
5 Q Does BellSouth bill CLPs for some services in  
6 advance of providing the services?  
7 A Yes  
8 Q Which services?  
9 A The services that are not transaction based  
10 So if you buy an UNE you pay a month in advance for  
11 the service that you will be receiving And if you  
12 have transactions -- following the discussion we had  
13 earlier today, IKOs transactions that -- or any  
14 transactions --  
15 Q Is that an independent billing company?  
16 A Independent companies  
17 Q Independent companies Thank you  
18 A Whether it generates transactions that we  
19 haven't received, we bill what we call in arrears  
20 Q What do you mean "in arrears"?  
21 A That we will receive the transactions and  
22 then bill for something that already occurred in the  
23 past  
24 Q Does that occur with IKOs?  
25 A If we're providing services that are

1 you're asking but it's the same thing I mean, I  
2 provided services -- rendered services and I presented  
3 the bill for the service rendered  
4 Q (By Ms Joyce) So in arrears means billed for  
5 services rendered, in your understanding?  
6 A I understand that I have to -- there are two  
7 types of transactions that I bill you for normally,  
8 something that you rented for your use in a facility  
9 That normally, I'll say "Okay You owe me this  
10 much Here's what it'll cost you for me to provide  
11 the service the following month " And then there are  
12 services that I provide to you that are  
13 transactionally based, a call of some sort If you're  
14 going to ask me to provide you the records for the  
15 call, I have to wait until the call transpires before  
16 I can bill you for it But I'm not going to bill you  
17 everyday for every call on that day I'm going to  
18 wait a certain period of time -- in this case, we have  
19 discussed the bill cycle -- and then, the following  
20 month, you're going to see those records that were  
21 actually -- those services that were actually rendered  
22 to you the prior month  
23 Q Do you know how services -- how collocation  
24 services are billed by BellSouth?  
25 A No, I'm not familiar at all how collocation

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1 transaction based, and event-based transaction to a  
2 CLP, it would be the same, we would have to complete  
3 the transaction, collect the information and then,  
4 the following month, bill for something that happened  
5 in the prior month That's what arrears means  
6 Q What is an example of a service that  
7 BellSouth bills in arrears?  
8 A I just said that Anything that -- any  
9 access service that is transactionally based If you  
10 place a call and I'm providing some sort of service  
11 to you and I generate a call record, then I would have  
12 to wait until I accumulate all the call records that  
13 potentially happened in this month And I would bill  
14 for those services those records -- or call records  
15 to you next month  
16 So, earlier you were asking me what DUF  
17 files were That's a good example DUF files are  
18 records that I'm going to charge you for that happened  
19 the prior month, but I'm billing you the current month  
20 for those services  
21 Q How is that different from presenting a bill  
22 for services rendered?  
23 MR CULPEPPER Object to the form of  
24 the question  
25 THE WITNESS I don't understand what

1 services are billed by BellSouth  
2 Q Do you know when a CLP pays for the creation  
3 of collocation is based?  
4 A I'm not familiar with how they're billed  
5 Q Do you know whether BellSouth has ever agreed  
6 with a CLP to accept a deposit that represented less  
7 than two months in actual billing?  
8 A Not in particular I don't have any case I  
9 believe your -- the CLPs in this arbitration might  
10 have deposits that might be worth two months or a  
11 little lower, and what we do in this case is that we  
12 reevaluate periodically -- normally, a year --  
13 annually to see if we need to increase the deposit  
14 based on the most current billings So potentially  
15 there could be a point in time that the billings for a  
16 particular customer -- for a particular CLP would have  
17 significantly increased And based on my periodic  
18 review, I'm short a deposit because I haven't done the  
19 review to ask the CLP for an increment on the policy  
20 based on the new types of billing  
21 For instance if your company -- if a CLP  
22 is generating a hundred million dollars worth of  
23 revenue a year and all the sudden he goes to a billion  
24 dollars worth of revenue the following year by the  
25 time I evaluate the new billings it's potentially

51 (Pages 198 to 201)

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1 possible that I don't have two months worth of deposit  
2 until I do that reevaluation. So depending on the  
3 time -- period of time, it's potentially possible that  
4 I might not have exactly two months billing. But the  
5 policy is that that's -- we should -- that's what we  
6 should have.

7 Q Let me rephrase. Has BellSouth ever agreed  
8 with a CLP to base the amount of the deposit on one  
9 month's worth of billing?

10 MR CULPEPPER Object to the form of  
11 the question.

12 THE WITNESS I don't know the answer  
13 to that question.

14 Q (By Ms. Joyce) Would anyone at BellSouth know  
15 the answer to that question?

16 A I would assume that somebody would know. I  
17 don't know what it would -- who would know the answer  
18 to that question. I personally don't know whether  
19 that's been an agreement.

20 Q Do you know whether in any BellSouth  
21 interconnection agreement, whether negotiated or  
22 arbitrated, there's a provision that a deposit will be  
23 based on one month's worth of billing?

24 A I'm not aware of one.

25 Q Do you know if anyone at BellSouth is?

1 negotiate the contracts themselves, not necessarily  
2 Ms. Cetti.

3 Q Please turn to Exhibit 3, your November 12th  
4 testimony.

5 A Okay.

6 Q This testimony regards Issue 7-8 of this  
7 arbitration. Page 18.

8 A Okay.

9 Q You state that, "BellSouth has never  
10 defaulted on its payments."

11 Do you see that?

12 A What lines? I'm sorry?

13 Q Lines 7 to 8.

14 A Okay. Yes, I see that.

15 Q What do you mean "BellSouth has never  
16 defaulted?"

17 A We paid what we owed.

18 Q Do you know whether the word "default" has a  
19 legal meaning?

20 A No. It's just laymen's terms meaning we paid  
21 what we owed.

22 Q In every instance, BellSouth paid what it  
23 owed?

24 MR CULPEPPER Object to the form of  
25 the question.

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1 A I don't know.

2 Q Do you know if Sandra Cetti would know the  
3 answer to that question?

4 MR CULPEPPER Objection. The  
5 question's been asked and answered.

6 THE WITNESS It's possible that she  
7 might know.

8 (Short recess had off the record from  
9 3:28 p.m. to 3:30 p.m.)

10 MS JOYCE Back on the record.

11 Q (By Ms. Joyce) Do you know whether BellSouth  
12 interconnection agreements include a provision that  
13 has a maximum deposit that is less than two months?

14 A I'm aware of this agreement, and this  
15 agreement stipulates two months. I haven't read an  
16 agreement personally that stipulates something  
17 different than two months.

18 Q Do you know whether anyone else at BellSouth  
19 may have read an interconnection agreement that had  
20 such a provision?

21 A I guess there could be somebody at BellSouth  
22 that would have read all our agreements and decided if  
23 there was one that had such a clause. I don't know.

24 Q Could Ms. Cetti have done so?

25 A I don't know whether Ms. Cetti or people that

1 THE WITNESS As far as I know, yes.

2 Q (By Ms. Joyce) Further down the page on Page  
3 18, beginning on Line 24, you stated that, "BellSouth  
4 has paid or disputed 39% of the invoices received from  
5 KMC within 30 days of receipt of these invoices."

6 Do you see that?

7 A Yes, I see that.

8 Q Do you know what happened to the other 62  
9 percent of invoices from KMC?

10 A No. That was, I believe, the period of time,

11 including last year, 2003, that there were discussions

12 about invoices, but I'm not familiar with specifics

13 about what happened to KMC. I believe that in the

14 latest supplemental information that you have

15 requested that was provided to you last week -- or the

16 week before last, I can't remember a specific date --

17 we gave you an updated -- we gave you an update on

18 these numbers. That was dated last week, maybe

19 Thursday or Friday or one of these days. I can't

20 remember the specific date. I just remember reviewing

21 it. And there were updated numbers, and if I remember

22 the numbers correctly, then in the case of KMC's 100

23 percent current, and the case of Xspedius is 93-94

24 95 percent. And, in the case of NuVox, I believe we

25 have moved towards more of a bill-and-keep arrangement.

52 (Pages 202 to 205)

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1 and there's not any outstanding  
2 Q What do you mean that KMC is 100 percent  
3 current?  
4 A That we are current in payments We had to  
5 pay 100 percent of our invoice within a 30-day period  
6 on it  
7 Q You haven't disputed any invoices?  
8 A Pay or disputed 100 percent of the invoice  
9 for them in a 30-day period of time  
10 Q How did --  
11 A I just want to make sure -- I'm not certain  
12 if I've got them backward but I just remember those  
13 two numbers  
14 Q That's fair  
15 How did you arrive at this 38 percent  
16 figure here at Line 24?  
17 A Just looking at the invoices that were paid  
18 or disputed for that period of time And again, in  
19 this case, I think it was mostly last year I can't  
20 remember the current time we looked at it It's a  
21 12-month period of time, but I think this is based on  
22 an April or May time frame when we first drafted the  
23 testimony So, it would have been primarily in  
24 2003 -- potentially, beginning in 2004  
25 Q Did you perform the calculations?

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1 A No, I didn't It was provided by the person  
2 that writes my testimony She gathered the  
3 information  
4 Q Did you perform the calculation that resulted  
5 in the numbers on the supplemental response given to  
6 the Petitioners that you have referenced?  
7 A No I looked at it when it was filed, and I  
8 did discuss it with the lady that put the supplemental  
9 response together  
10 Q Do you know, for the period represented here  
11 in your testimony, where it says "In the past 12  
12 months --"  
13 A Yes  
14 Q -- what percentage of bills from Xspedius  
15 BellSouth disputed?  
16 A No, I don't I mean I see here that we pay  
17 95 percent -- 91 percent of the invoices were Xspedius  
18 during that period of time in the past 12 months But  
19 I don't know what percents were disputed and what  
20 percents were actually paid within the 30 days which  
21 is what -- the period we're discussing here  
22 Q Do you know what happened to the other 9  
23 percent of the Xspedius invoices?  
24 A No, I don't  
25 Q And do you know the percentage of invoices

1 that BellSouth received during that period that  
2 BellSouth disputed?  
3 A From?  
4 Q KMC  
5 A No, I don't  
6 Q If an invoice is paid in full does that mean  
7 it's been paid in your opinion?  
8 A Yes If I paid in full, it's paid unless I  
9 dispute portions of it, and then it will be partially  
10 disputed and partially paid But if I paid in full,  
11 that means it's paid in full  
12 Q If an invoice is disputed in part and paid in  
13 part, is that invoice paid?  
14 A Collectively paid no I mean, part is paid  
15 part is disputed But it would -- if you're asking me  
16 if that would be included on the percentages -- if  
17 that's what you're inferring yes  
18 Right here on Line 20 of Page 18 I said  
19 "BellSouth has paid or disputed 91% of the invoices  
20 for Xspedius in this case," and the other ones are  
21 listed down below So we pulled those two numbers  
22 together to provide the figure to show you that in  
23 that period of time we were current, meaning that we  
24 had paid and/or disputed within a 30-day period of  
25 time the majority of our invoices received

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1 Q So then, for an invoice to be paid it really  
2 must be paid in full is that your understanding  
3 Otherwise it's paid in part?  
4 A If it's partially paid, it's partially paid  
5 If it's paid in full, it's paid in full That would  
6 be the distinction  
7 Q And when you use the word "paid" at Line 20  
8 of Page 18 do you mean paid in full?  
9 A You asked me whether that 91 percent included  
10 partial and/or full and I said I didn't know, so I  
11 don't know what percentage of the 91 percent is  
12 disputed If I knew that, I could tell you how many  
13 -- what percentage were fully paid and what percentage  
14 were partially paid, but I don't know what the  
15 breakdown is  
16 Q Is it possible that some of those 91 percent  
17 of invoices that group of invoices, some were  
18 partially paid and partially disputed?  
19 A I would have to assume that because if I'm  
20 including disputed in the 91 percent that would imply  
21 by default that there are some partially paid  
22 Q Continuing in Exhibit 3, your November 20th  
23 testimony, on Page 20, the top of the page  
24 A Okay  
25 Q Lines 1 to 2 Do you have that?

53 (Pages 206 to 209)

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1 A Page 20 Yes. I do  
2 Q It states. "BellSouth has a responsibility to  
3 its shareholders and to its other customers to not  
4 assume unnecessary risk."  
5 Do you see that?  
6 A Yes I see that  
7 Q What is an "unnecessary risk"?  
8 A If I -- as a company I'm aware -- in this  
9 particular case we're talking about Issue 7-9 which  
10 refers to the process of termination for nonpayment of  
11 a deposit So, unnecessary risk would be that I'm  
12 aware that the CLP that I'm about to provide services  
13 for or to is a financial risk As a corporate citizen  
14 and shareholder, part of my job would be to ensure  
15 that I don't have undue risk unnecessary risk In  
16 this case that would be if I'm cognizant of the fact  
17 that there's risk providing service to somebody would  
18 be wrong  
19 Q Are all risks unnecessary?  
20 MR CULPEPPER Object to the form of  
21 the question  
22 THE WITNESS I don't really  
23 understand the question I mean in what context?  
24 Q (By Ms Joyce) In the context that you said  
25 this is an unnecessary risk

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1 A Yes In this context, it is not necessary  
2 for me to engage in a business relationship when I'm  
3 aware that the entity that I'm doing business with  
4 might not pay me  
5 Q Are there necessary risks?  
6 A In this context or --  
7 Q In any context  
8 A Yes Businesses take risks when they embark  
9 in any business relationship We don't necessarily  
10 know how the other person is going to act or the other  
11 group is going to act and whether the services are  
12 going to be done properly or not or collected and  
13 paid on time So, it's a risk we have to -- as a  
14 business deal, wherever they exist, we shouldn't be  
15 blind to them  
16 Q In this sentence who are the other customers  
17 to whom you refer?  
18 A Other CLPs  
19 Q Also on this page, further down the page  
20 beginning at Line 16 you state "CLPs have been known  
21 to go to a state commission with no legitimate reason  
22 to dispute the deposit request but just to delay  
23 paying the deposit."  
24 Do you see that?  
25 A Yes I see that

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1 Q Which state commission?  
2 A I'm aware of one, and I don't remember the  
3 CLP but I assume there are others or there have been  
4 others in the past  
5 Q Are you aware of one instance such as this?  
6 A Personally I'm aware of one instance such as  
7 this, yes  
8 Q What state commission was involved?  
9 A Florida  
10 Q Did the state commission say that that CLP  
11 had no legitimate reason to dispute the deposit?  
12 A I don't believe that there's been a decision  
13 or an order on the incident  
14 Q So is it your opinion that the particular CLP  
15 has no legitimate reason to dispute their deposit?  
16 A Yes I mean our policy is clear that we  
17 require a two-month deposit based on potential  
18 billings or existing billings that the customer --  
19 that the CLP may have with us So, if this policy is  
20 clear, I don't understand  
21 Q Is it a deposit dispute as important to  
22 BellSouth as a CLP obtaining unauthorized access to a  
23 customer service record?  
24 A They're two different issues  
25 Q Are they equally grave in BellSouth's

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1 estimation?  
2 MR CULPEPPER Object to the form of  
3 the question  
4 THE WITNESS One deals with  
5 financial risk The other one with improper use of  
6 facilities Improper use of facilities could  
7 potentially be unlawful use of facilities And this  
8 one the deposit is more a financial risk So far,  
9 there's that distinction They're equally important  
10 to us because we feel that our policy is reasonable,  
11 to have the right to terminate access and/or services  
12 based on those two conditions  
13 Q (By Ms Joyce) Is financial risk as grave to  
14 BellSouth as risk to the integrity of its network?  
15 MR CULPEPPER Object to the form of  
16 the question  
17 THE WITNESS Like I said, I believe  
18 they're equally significant risks that the company  
19 must manage somehow In this case, the steps that  
20 we're taking in this -- my testimony is to mitigate  
21 those risks I believe that we still have not  
22 eliminated the risk but we have mitigated the risk by  
23 requiring a deposit?  
24 Q (By Ms Joyce) Is BellSouth willing to permit  
25 deposit disputes to be resolved in accordance with the

54 (Pages 210 to 213)

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1 dispute resolution process outlined in this Agreement?"  
2 MR CULPEPPER Object to the form of  
3 the question

4 THE WITNESS I believe that's an  
5 option that both sides have In this case, the CLPs  
6 has that option to do that so I don't believe based  
7 on the dispute resolution of our contract that we can  
8 tell you not to dispute it in front of the state

9 commission However, in this case, if you don't  
10 provide a deposit before you go to the state  
11 commission to dispute it, we require that you post a  
12 bond for the amount of the deposit

13 Q (By Ms Joyce) And what do you mean "post a  
14 bond for the amount of the deposit?"

15 A Just that You go and post a bond for the  
16 amount of the deposit while the dispute is being  
17 resolved by the commission, which -- as you were  
18 asking me earlier, it could be quick or it could take  
19 a long time I don't know how long it normally takes  
20 I understand that you could potentially ask the  
21 commission for a faster delivery of a decision but  
22 still it's going to take time

23 Q If a CLP disputes the amount of the deposit  
24 that it has to pay, would BellSouth ask a state  
25 commission to resolve that dispute?

1 Q And is that what you mean by the CLEC should  
2 post a bond?

3 A Yes

4 Q If a CLEC places the deposit in escrow can  
5 the CLEC spend that money on other things?

6 A Yes, I would assume that they could  
7 potentially use the funds for some other purpose

8 Q If funds are placed in escrow, can the CLEC  
9 access them?

10 A I'm not familiar how the escrow accounts work  
11 in the case of a CLEC An escrow account, in my case  
12 a user of bank services implies that I wouldn't have  
13 access to those funds But in the case of a CLP I'm  
14 not certain what arrangements the CLPs might have with  
15 their banks

16 Q Beginning on Line 13 on Page 20, you state  
17 "The dispute would likely go to arbitration, however,  
18 if the dispute lingers for more than 60 days  
19 BellSouth's position is this deposit should be put in  
20 escrow "

21 A That's correct

22 Q Why would a dispute linger for more than 60  
23 days?

24 A My experience with disputes, as stated  
25 earlier, is that they normally last a year or

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1 MR CULPEPPER Object to the form of  
2 the question

3 THE WITNESS I wouldn't think that  
4 would be our first course of action, but I guess we  
5 could if we wanted to

6 Q (By Ms Joyce) What would be your first  
7 course of action?

8 A Notify you that we were terminating your  
9 service or access to the systems if you didn't pay the  
10 deposit as stipulated in the contract

11 Q So, to obtain a bond does a CLP expend  
12 financial funds to place something in a bond?

13 A I would assume that there would be some  
14 financial resources spent I'm not familiar with the  
15 bonds and what type of process a bank or whoever  
16 provides the bond to the CLP might have on the person  
17 or the group requesting the bond

18 I would assume they would also look at the  
19 financial health of the company that's asking for the  
20 bond and their credit worthiness

21 Q On Page 20 of your testimony at Line 15 you  
22 state "BellSouth's position is that the deposit  
23 should be placed in escrow "

24 Do you see that?

25 A Yes, I do

1 sometimes longer So, this is a way for us to make  
2 sure that we have the bond in case that it might  
3 linger past 60 days

4 Q If the parties dispute the amount of the  
5 deposit that the CLP has to pay would you expect that  
6 they would negotiate about that dispute?

7 A I would think that would be the first steps  
8 that the parties would do is negotiate before either  
9 party taking the case to a state commission for  
10 resolution That's my business rational thinking  
11 telling me that I would think that a CLP as well as  
12 BellSouth, would engage in negotiations to come to a  
13 reasonable agreement However our position continues  
14 to be that if there's no way for the -- if we don't  
15 reach an agreement in any way shape or form this  
16 policy stands that we require the customer -- CLP post  
17 a bond or put money in the escrow while the dispute is  
18 being resolved by a commission

19 Q And it should be placed in escrow on the 61st  
20 day, according to your testimony here?

21 A If it lingers for more than 60 days, yes

22 Q If the parties disputed the amount of the  
23 deposit that the CLP is being asked to pay would  
24 BellSouth file a complaint with any commission or  
25 agency?

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1 A I don't believe BellSouth would -- again.  
2 we'd probably negotiate first. We would reiterate our  
3 position that we do need the two-month deposit, and if  
4 we feel it necessary to file a complaint or in the  
5 case of a CLP filing a complaint I think based on the  
6 dispute resolution that you referenced earlier we  
7 both have equal rights to engage in that dispute  
8 resolution to resolve this issue

9 Q Is it your position that if there is a  
10 dispute about a deposit amount, that the CLP should  
11 file a formal -- a complaint with the commission?

12 A They're entitled based on the dispute  
13 resolution to file a complaint with the commission. I  
14 don't -- I can't advise them. I don't work for the  
15 CLP, but they're entitled based on contract language  
16 to do that. They would have received notices. I would  
17 assume in this case that we discussed. They received  
18 notices that we were going to terminate access and  
19 that we were potentially terminating service. And, at  
20 that point in time I would think that they are the  
21 most likely group, between us and them, that would  
22 file a complaint to a commission for a resolution

23 Q Why are they the most likely group?

24 A Well, we sent them the notice. They haven't  
25 paid the deposit. We will terminate service -- we

1 section that is in dispute in this Issue 7-10?

2 A I believe so, yes

3 Q I draw your attention first to the text that  
4 appears under a customer short name version. Do you  
5 see that?

6 A Yes, I do

7 Q And is it your understanding that the  
8 language that is in this Agreement that is bolded  
9 indicates that it's in dispute?

10 A Yes

11 Q Do you see where it says, "either Party," in  
12 bold, "may file a petition for resolution"?

13 A Yes

14 Q I now direct your attention to the BellSouth  
15 version of this language

16 A Yes

17 Q Four lines down in bold, it has a bracketed  
18 place holder, "customer\_short\_name may file a  
19 petition "

20 Do you see that?

21 A Yes, I do

22 Q Do you know why BellSouth has not agreed to  
23 the language, "either Party may file a petition"?

24 A In this particular instance, no. I'm not. I  
25 don't know why they excluded our name in this case

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1 will retain the right to terminate service and/or  
2 suspend access to the ordering systems. So, if they  
3 feel harmed, then they will potentially file the  
4 complaint

5 Q If they file a complaint, will BellSouth  
6 suspend their service?

7 A We reserve the right to suspend the service  
8 and terminate service if they don't post a bond, but  
9 we will continue to discuss the issue with them

10 Q If they file a complaint and they don't post  
11 the bond, will BellSouth terminate their services?

12 A We reserve the right to do that, yes. I'm  
13 not aware of that having happened recently, but I  
14 didn't ask that question

15 Q Can you please look at your Exhibit 9, which  
16 is Attachment 7 to your. Is it this (indicating)?

17 A Sorry, I had Attachment 7 there, but it  
18 wasn't that one. Attachment 6 or 7?

19 Q I need Attachment 7, which is your Exhibit 9

20 A I got it. I got

21 Q I know you have a lot in front of you. Can  
22 you please turn to Page 12 and look at what is marked  
23 at 1 & 7. Do you see that?

24 A Yes, I do

25 Q And is it your understanding that that is the

1 However, I believe in the dispute resolution section,  
2 I think it can be both ways, we can file a complaint  
3 or you can file a complaint. And I'm not sure if it  
4 supersedes this or it could be used to do that. But I  
5 don't think this, in the way it's written, preempts us  
6 from not from filing a petition to the commission

7 Q What are you referring to, "this, in the way  
8 it's written"?

9 A What you made me read, "May file a petition  
10 with the Commissions for resolution of the dispute  
11 with both parties." I mean, I think if we reach a  
12 dispute of some sort, we can invoke the Dispute  
13 Resolution clause in the General Terms and Conditions  
14 section. If there's a dispute, I believe that  
15 section, the Dispute Resolution, talks to that -- the  
16 ability for both parties to be able to do that

17 Q I believe you've testified that BellSouth  
18 reevaluates what should be the appropriate deposit  
19 amount for a CLP on a regular basis?

20 A You're referring to my testimony --

21 Q I'm referring to your testimony today with  
22 respect to another issue regarding deposits

23 A I'm sorry. If you restate it, I can --

24 Q I believe it's your testimony today that  
25 BellSouth reevaluates appropriate deposit amounts for



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1 a CLP  
2 A Yes. I did  
3 Q Is it ever the case that the appropriate  
4 deposit amount is less than what BellSouth has already  
5 collected in deposit funds?  
6 A I guess that's a possibility And even in  
7 that case we will probably return or refund the  
8 difference And we have done in the case of one of  
9 your clients -- CLPs. we have actually refunded part  
10 of their deposit based on their financial health and  
11 payment history. so we were able to do that as well  
12 Q Has it ever occurred that a CLP came to you  
13 and said. "We've been a good customer and paid on  
14 time. and we think we're entitled to some of our  
15 deposit back " and BellSouth disagrees with that CLP's  
16 position?  
17 A I don't know However I believe you asked  
18 me earlier today. a deposit is a way for us to  
19 mitigate financial risk and. although somewhat related  
20 to payment history and the way the customers pays  
21 it's not the payment history that indicates a customer  
22 could potentially file for bankruptcy And I believe  
23 we reviewed part of my testimony where I referenced  
24 WorldCom. Adelphia. Cable and Wireless. and Global  
25 Crossing that were companies that paid on time

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1 however they did file for bankruptcy And that's  
2 what we're trying to mitigate with a deposit. not  
3 whether or not the company pays on time. which is  
4 great if they do. but that's not the risk we're trying  
5 to mitigate  
6 Q But in your experience. has it ever happened  
7 that a CLP felt entitled to get some of its deposit  
8 back and BellSouth disagreed with that position?  
9 A I'm not aware of a situation like that  
10 Q On Page 21 of Exhibit 3 which is your  
11 November 12th testimony  
12 A Hold on a minute  
13 Q I know You have a lot in front of you  
14 I'll give you a moment  
15 A Page --  
16 Q Page 21 Line 4 --  
17 A Okay  
18 Q -- from Line 4 to Line 6. you've stated that  
19 "BellSouth shall not terminate service during the  
20 pendency of such a proceeding provided that the CLP  
21 posts a payment bond for the amount of the requested  
22 deposit during the pendency of the proceeding "  
23 Do you see that  
24 A Yes I see that  
25 Q Will a CLP involved in a deposit dispute with

1 BellSouth only avoid terminating service if it posts a  
2 bond?  
3 A That is what this sentence says The  
4 policy's that we reserve the right to do so. so that  
5 doesn't necessarily mean that we will do that But.  
6 yes that's what this statement says that if during  
7 the pendency of such proceeding the CLP does not post  
8 the bond I retain -- we retain the right to terminate  
9 service and/or access to systems  
10 Q So. do I understand your answer that absent  
11 the posting of a bond if a dispute about a deposit  
12 persists service to a CLP will be terminated? Is  
13 that your testimony?  
14 A Potentially terminated We reserve the right  
15 to do so  
16 Q Also on Page 21 of this exhibit --  
17 MR CULPEPPER Exhibit 3 or --  
18 THE WITNESS Yes. Exhibit 3  
19 Q (By Ms Joyce) Exhibit 3. you discuss on  
20 Line 17 to 19 "In the past two years. there have been  
21 three instances in which BellSouth has asked a state  
22 commission to require a CLP to pay a deposit where the  
23 CLP has not done so "  
24 Do you see that  
25 A Yes I do

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1 Q Then later. you state. "While BellSouth was  
2 waiting for state commission action the CLP filed for  
3 bankruptcy "  
4 Do you see that  
5 A Yes. I read that as well  
6 Q Did BellSouth ever receive any deposit funds  
7 from the CLPs in those instances?  
8 A I don't know whether they did  
9 Q Do you know whether BellSouth had indeed.  
10 provided services to the CLPs prior to the bankruptcy?  
11 A No. I don't I would assume that they  
12 probably were providing service to the customers  
13 Q Why would you assume that?  
14 A Because if the deposit was not provided to  
15 us we are unlikely to have started a business  
16 relationship with a customer -- with a CLP. and if we  
17 asked for a deposit to begin service and the deposit  
18 is not paid I would think rationally that we wouldn't  
19 begin providing services to a customer In this  
20 case -- this experience seems to be cases where  
21 they're existing customers  
22 Q Do you know whether BellSouth was paid for  
23 services rendered in those instances?  
24 A No. I don't  
25 Q Do you think it's possible that a CLP could

57 (Pages 222 to 225)

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1 feel entitled to receive some of its deposit back and  
2 BellSouth would say no?  
3 MR CULPEPPER Object to the form of  
4 the question  
5 THE WITNESS I guess that that case  
6 could potentially theoretically happen I mean I  
7 can't dispute that that's a possibility I mean,  
8 there's a lot of possibilities in the world, so that  
9 might be one But I'm certain that if it was an  
10 existing customer, we would definitely try to explain  
11 to them how we arrived at the deposit why we feel  
12 that the deposit is such and show them why we feel  
13 that there's risks, and the reason why the deposit  
14 should be so We don't do things in isolation We  
15 normally talk to our customers when we get into  
16 situations like this And your clients -- your three  
17 clients, we've talked to them about the deposits  
18 We've refunded the deposit to one of them And I'm  
19 not certain what the cycle of review for their -- they  
20 are right now but I'm assuming if we were able to  
21 review them and agree that there should be less of a  
22 deposit, we would potentially refund the deposit And  
23 we'd tell them And I believe one of your clients was  
24 very happy to have received the deposit refunded  
25 Q (By Ms Joyce) Which client was that?

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1 A Last year -- I think NuVox, N-U-V-O-X  
2 Q If BellSouth didn't believe that it should  
3 refund part of a deposit -- there was a dispute about  
4 that, should BellSouth follow the policy that's  
5 outlined in your testimony for dealing with disputed  
6 deposit amounts?  
7 MR CULPEPPER Object to the form of  
8 the question  
9 THE WITNESS If BellSouth did not  
10 agree with a CLP about the CLP's position about the  
11 deposit amount what would be the actions that  
12 BellSouth would take? Is that what you're asking me?  
13 Q (By Ms Joyce) If you disputed that you had  
14 to give back some of the deposit, would BellSouth  
15 follow the policy that you discussed on Page 21 that  
16 applies -- that in your testimony would apply to a  
17 CLP And I refer you to Line 4 to 6 on Page 21  
18 A So, are you asking me would we start a  
19 proceeding with a state commission? Is that what  
20 you're asking me?  
21 Q Would you follow the policy that you've  
22 outlined for how to deal with deposit disputes?  
23 A Well, my policy for disputes -- if I have a  
24 dispute -- a claim against a CLP and we can't come to  
25 a resolution in commercial terms, then yes I would

1 have the same right as the CLP to go to a state  
2 commission and say, "Hey, I have a dispute "  
3 Q Would BellSouth post a bond for the amount in  
4 dispute, put it in escrow?  
5 A I don't follow your question, but I don't  
6 think we would post a bond  
7 Q If a CLP thinks it's entitled to a refund and  
8 BellSouth doesn't, should BellSouth place the  
9 requested refund amount in escrow pending the  
10 resolution of the dispute?  
11 MR CULPEPPER Object to the form of  
12 the question  
13 THE WITNESS Our policy, as stated  
14 is that in the case of a CLP not paying a deposit,  
15 that we would reserve the right to do this, stop  
16 access to ordering systems and potential termination  
17 of services  
18 Q (By Ms Joyce) So BellSouth would not post a  
19 bond for the disputed refund amount?  
20 A I haven't heard that that's been a case  
21 Q But under your understanding of the policy  
22 that you're setting forth to the state commission in  
23 this arbitration -- and your position is that if the  
24 CLP doesn't want to pay the requested deposit amount,  
25 it should put that amount in escrow pending the

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1 resolution of the dispute?  
2 A Yes, that's our policy as stated  
3 Q Should that same requirement of posting a  
4 bond apply to BellSouth in the event that there is a  
5 refund amount in dispute?  
6 A The purpose of a deposit is to mitigate  
7 financial risk In this case that you're describing,  
8 I'm not generating financial risk for the CLP, so I  
9 don't understand why I'd have to post a bond I mean,  
10 I'm the one providing service to the CLP The risk is  
11 on me -- financial risk of the CLPs nonpayment  
12 Q Do CLPs face financial risk?  
13 A I think every business faces financial risk  
14 Q And in the instance I've described of a  
15 disputed refund of a deposit BellSouth is holding  
16 that money, is that right?  
17 A The deposit yes and we're paying --  
18 potentially we're paying interest on the deposit  
19 Q In your opinion if a CLP's deposit money is  
20 being held by BellSouth does that constrain the CLP's  
21 financial resources?  
22 MR CULPEPPER Object to the form of  
23 the question  
24 THE WITNESS A deposit in this case  
25 is part of doing business It's just a business

58 (Pages 226 to 229)

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1 decision I mean, if you want to buy services, and  
2 the customer or the company is providing you services  
3 and requests a deposit, that's a decision you have to  
4 make. You know, to engage in this business with this  
5 other entity, that's the purpose of the deposit. In  
6 this case, the deposit is for mitigation of risk --  
7 financial risk on behalf of CLPs in a relationship  
8 with BellSouth. That's why we asked for the deposit.  
9 We don't pose a financial risk to the CLPs, as far as  
10 I know, because we -- if we provide services in the  
11 terms that you provide service and that CLP provides  
12 service to us, I'm not aware of that being the case.  
13 So, I don't understand why would I have to post a  
14 deposit for a service that you potentially would be  
15 rendering -- the CLP would potentially be rendering  
16 for us.

17 Q (Bv Ms Joyce) I don't think that was my  
18 question. I'm not asking for a deposit for services  
19 or anything to do with the CLP providing a service to  
20 BellSouth.

21 To be clear, the situation I posed is the  
22 CLP has given you deposit money.

23 A Right.

24 Q And in a subsequent evaluation of the  
25 company's financial health and credit risk, the

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1 company thinks that they should get part of that  
2 deposit back. The company may say that to you or  
3 BellSouth, and BellSouth says, "We don't agree that  
4 you should get this money back." On the CLP's side --  
5 do you understand that scenario?

6 A Yes, so far.

7 Q Now the decision-making process you described  
8 for the CLP -- if a CLP has a million dollars and they  
9 give BellSouth \$500,000 in the form of a deposit, how  
10 much money does the CLP have to spend?

11 A In your example -- a million dollars and you  
12 give me half a million dollars, the CLP would have  
13 half a million dollars to spend.

14 Q Can the CLP spend the money that it has given  
15 to BellSouth?

16 A No. It's a deposit that is paying interest  
17 to the CLP. We have -- really, just the fact that we  
18 have to pay interest while we hold the deposit is not  
19 necessarily an incentive for us to hold that  
20 indefinitely. And in the case of one of your clients  
21 again, we refunded that money to them because we felt  
22 that they have done well and their credit risk --  
23 their credit worthiness improved, so we refunded  
24 those.

25 Q Absent a refund, can a CLP spend that half a

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1 million dollar deposit that it gave to BellSouth?

2 A I believe that's humanly impossible for a CLP  
3 to have an account with half a million dollars and  
4 only have \$500,000 left to be able to spend in this  
5 account if he's not entitled to have the account --  
6 access to the account. So, unless there's some weird  
7 financial engineering, I don't understand it.

8 Q So, is the CLP's spendable cash limited to  
9 half a million dollars in my example?

10 A That would seem logical. The math would  
11 work, yes.

12 Q Does half a million dollars in today's  
13 economy buy as large an amount of goods as a million  
14 dollars?

15 A I guess it depends on what you want to buy.  
16 I mean, mathematically you can't. I mean, a million  
17 dollars would buy more potentially of the same good as  
18 \$500,000 would buy. If you're talking about the same  
19 good, mathematically you can't buy more.

20 Q Does BellSouth think it's entitled to keep a  
21 deposit absent a -- an order of a state commission  
22 ordering it to refund it?

23 MR. CULPEPPER: Object to the form of  
24 the question.

25 THE WITNESS: I haven't heard of an

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1 instance where we have actually held more of a  
2 deposit, without refunding it to the CLP, than  
3 necessary. We don't have an incentive. We're paying  
4 interest on these funds, so I don't see why there  
5 would be an incentive for me to hold the money  
6 indefinitely.

7 If the company's credit worthiness  
8 improves, I have incentive to return the money.  
9 First, it's a contractual agreement and, second, it  
10 makes sense financially. So, I haven't heard the case  
11 that you're mentioning to me at all. On the converse,  
12 I've heard more cases where, potentially, we  
13 reevaluate the credit worthiness and we are  
14 significantly short of the deposit amount and then we  
15 have to go ask for more.

16 So we are pretty balanced. We refund  
17 people their monies when they're due and we ask for  
18 money when it's due.

19 Q So it would be your testimony that the  
20 requirement to post a payment bond will apply only to  
21 the CLPs when BellSouth provides CLPs services?

22 A In my testimony, yes, that's what I believe  
23 -- that's what I stated, that if the CLP fails to pay  
24 for the deposit, then I reserve the right to terminate  
25 access -- suspend access to ordering systems and

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1 terminate service I reserve the right to do that  
2 Q And the posting of a payment bond, that  
3 requirement does not apply to BellSouth in this  
4 agreement?

5 A From my standpoint, no I mean, what we were  
6 discussing I don't understand why I would have to  
7 post a bond

8 Q Would BellSouth be willing to accept an  
9 obligation that if a CLEC disputes the amount of  
10 deposit it's asked to pay, that BellSouth will file a  
11 complaint with the state commission?

12 MR CULPEPPER Object to the form of  
13 the question

14 THE WITNESS I don't believe I  
15 follow Would you mind repeating that because I'm not  
16 certain that I follow that one

17 Q (By Ms Joyce) I know it's getting a little  
18 late

19 If a CLEC disputes the amount that  
20 BellSouth wants it to pay in deposit --

21 A Okay

22 Q -- would BellSouth be willing to accept an  
23 obligation to file -- if the dispute persists, to file  
24 a complaint with the state commission and seek  
25 resolution of that dispute?

1 asking me I guess our position stays there, that we  
2 prefer our language than your language

3 Q And so BellSouth is not willing to take that  
4 obligation? Is that your understanding?

5 MR CULPEPPER Objection to the form  
6 of the question What obligation are we talking  
7 about?

8 MS JOYCE The obligation to file a  
9 complaint

10 MR CULPEPPER And in what  
11 circumstances?

12 MS JOYCE If a CLP --

13 MR CULPEPPER Asked for a refund?

14 MS JOYCE Can you read my question  
15 back?

16 (Last question read back )

17 THE WITNESS I stated this before  
18 Our language says that in this case, the "customer  
19 short name" may file a petition with the commission  
20 for the resolution of dispute, and that's what our  
21 preference at this time would be, that the CLP file a  
22 petition to the commission for a resolution of the  
23 dispute, and that both parties shall cooperatively  
24 seek an expedited resolution for such dispute

25 MS JOYCE Could we go off the

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1 A If a CLEC -- I'm sorry I don't think I'm  
2 following your question, but if a CLEC refuses to pay  
3 a deposit, would BellSouth agree to --

4 Q No, that's not my question

5 A Okay

6 Q A CLEC is disputing the amount it's supposed  
7 to pay

8 A A CLEC is disputing the amount it's supposed  
9 to pay for a deposit

10 Q And BellSouth wants the deposit under this  
11 agreement I think we've established that

12 A Yes

13 Q Would BellSouth be willing to accept an  
14 obligation that it has to go to a state commission and  
15 file a complaint and seek resolution of that dispute?

16 A I don't know if we'd be willing to do that  
17 I mean I think if I'm following you correctly that  
18 you're saying that referring back to our language  
19 you would want your bolded language versus ours  
20 Essentially you want -- if the parties aren't able to  
21 agree either party may file versus what I -- our  
22 language stipulates that the CLP would file a  
23 petition

24 And, I guess our position is -- if that's  
25 what you're asking me -- if that's the question you're

1 record?

2 (Short recess had off the record from  
3 4 24 p m to 4 30 p m )

4 MS JOYCE Back on the record

5 Q (By Ms Joyce) Mr Morillo, I'm going to ask  
6 you a yes or no question You tell me if you agree  
7 But there are two potential areas of dispute with  
8 respect to deposit There's one type the dispute  
9 whether BellSouth is entitled to a deposit Another  
10 -- the other type, a dispute over whether a CLEC is  
11 entitled to a refund

12 MR CULPEPPER Object to the form of  
13 the question

14 THE WITNESS Whether BellSouth is  
15 entitled to a deposit? I would have to answer that in  
16 the affirmative Yes I think that's the dispute in  
17 case that we're discussing

18 And whether the CLPs were entitled to a  
19 refund, I didn't think that was in dispute because I  
20 told you that we refund deposits to CLPs when their  
21 financial credit worthiness improves We had a  
22 deposit refunded to one of your clients so I didn't  
23 think that was in dispute

24 The first one I affirm that that's  
25 disputed We believe that, yes we're entitled to a

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1 deposit and that we have the right to terminate access  
2 to ordering systems or terminate to services not paid  
3 Q (By Ms Joyce) But I believe you testified  
4 that it is possible that there could be a dispute as  
5 to whether a CLEC is entitled to a deposit refund  
6 Isn't that the case?  
7 A You asked me a question whether that is a  
8 potential I would assume that a CLEC has every right  
9 to communicate with BellSouth and say "Hey, you know,  
10 I would like to see how my deposit was calculated "  
11 and begin dialogue to see how we calculated why we're  
12 asking for a deposit So, yes they're entitled to do  
13 that and I don't think we would negate those  
14 discussions  
15 Q Could there be a dispute?  
16 MR CULPEPPER I'm going to object  
17 to the line of questioning This deponent has been  
18 questioned over and over and over over disputes about  
19 refunds of deposit amounts which I don't believe is  
20 an issue in the arbitration at all And I think he's  
21 been asked and answered the question  
22 MS JOYCE At issue in the  
23 arbitration is the remedy when there's a dispute over  
24 a deposit amount, and Petitioners are interested to  
25 know if that policy that BellSouth is seeking to

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1 enforce is going to be bilateral in any way and I  
2 think that's within the purview of the issue  
3 MR CULPEPPER And I think he's  
4 answered the question no but Carlos, you can answer  
5 it again no if you want to  
6 THE WITNESS Yes, I had stated when  
7 we reviewed that language -- our proposed language  
8 that here we say that you might file a petition with  
9 the commission in our language I don't -- and you  
10 asked me whether I'd be willing to agree that  
11 BellSouth should also file a petition And I said no  
12 that's not our language, that you may file a petition  
13 to the commission for resolution of disputes and that  
14 both parties shall cooperatively seek an expedited  
15 solution to the dispute  
16 Q (By Ms Joyce) Should BellSouth file a  
17 petition with the commission regarding a dispute over  
18 whether BellSouth is entitled to a deposit?  
19 A I think I just answered that In the text  
20 it says that you may file -- the CLPs may file one  
21 That BellSouth -- in the language that I'm reading --  
22 in the proposed language it's not proposing that they  
23 do  
24 Q That the CLPs do what?  
25 A "Customer\_short\_name may file a petition with

1 the commission as to resolution of the dispute and  
2 both parties shall cooperatively seek expedited  
3 resolution to such dispute " So, in this case, our  
4 language stipulates that the CLPs should file the  
5 dispute  
6 Q If there is a dispute as to whether a CLEC is  
7 entitled to a refund, should the CLEC file the  
8 petition  
9 A I believe the dispute resolution and the  
10 General Ts and Cs allows the CLEP to file disputes  
11 The dispute resolution and the GTs and Cs allows the  
12 CLP as well as us, to file a complaint to the  
13 commission, so I don't see why they wouldn't If they  
14 wanted to they could file I would hope that we  
15 engaged in dialogue and worked it out and see what the  
16 dispute's about before they go to the commission, but  
17 they are entitled to based on our contract language  
18 Q Under BellSouth's contract language is  
19 BellSouth entitled to file a petition?  
20 MR CULPEPPER Contract 1 8 7?  
21 MS JOYCE Yes  
22 THE WITNESS Our proposed language  
23 says that you may file a dispute In this particular  
24 case, referring to the deposit amounts  
25 Q (By Ms Joyce) Is BellSouth entitled under

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1 that language to file a petition?  
2 A It doesn't say that in our proposed language  
3 Q Okay At Page 22 of your November 12th  
4 testimony, which is Exhibit 3 at Lines 4 to 6, you  
5 state that "The 15-day computer-generated notice  
6 stating that BellSouth may suspend a CLP's access to  
7 BellSouth's ordering systems should go to the  
8 individual(s) that the CLP has identified as its  
9 Billing Contact(s) "  
10 Do you see that?  
11 A Yes, I see that text  
12 Q Is this notice procedure the procedure that  
13 is outlined in the general terms and conditions of  
14 this contract?  
15 A It's probably outlined on 7 -- Attachment 7  
16 Q Do you know whether it's also outlined in the  
17 General Terms and Conditions?  
18 A The notices that refer to General Terms and  
19 Conditions are also in Attachment 7  
20 Q I believe Section 1 9 1 governs this  
21 A Thank you Notice pursuant to this  
22 Agreement yes  
23 Q And are you referring to Exhibit 9 on  
24 Page 13?  
25 A Yes, I am

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1 Q And the section labeled 1 9 1"  
2 A Yes. I am  
3 Q And there are two versions of language here,  
4 one labeled "|<<customer\_short\_name>>version|" and  
5 the other labeled. |BellSouth Version| "  
6 Do you see that?  
7 A Yes I see it  
8 Q In BellSouth's version of the language, the  
9 first sentence of this language does that indicate  
10 that that notice will be provided in accordance with  
11 the General Terms and Conditions?  
12 A The last sentence in the paragraph makes  
13 reference -- the next to the last sentence in the  
14 paragraph makes reference to Notices provision of the  
15 General Terms and Conditions of this Agreement and  
16 that the notices referenced in this section should be  
17 sent in accordance with the time frames set forth in  
18 Section 1 7  
19 So, there's two references, but the  
20 original suspension notice reference here will be  
21 supplied through the billing contact  
22 Q Who is the billing contact?  
23 A Somebody that the CLPs will define As we  
24 were discussing earlier about -- in another one of the  
25 issues, this is the notice of suspension that is

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1 automatically generated by systems when payment is not  
2 received, so the system will generate this based on  
3 the contact that the CLPs define as the billing  
4 contact  
5 Q At Lines 9 to 10 on this Page 22 of Exhibit  
6 3 --  
7 A Okay  
8 Q You state that -- or appear are the words,  
9 "in addition to the CLP's designed billing contact "  
10 Do you see that?  
11 A Right I see that  
12 Q Did that intend to mean "designated billing  
13 contact"?  
14 A Yes  
15 Q And I draw your attention to the words  
16 "Billing Contact" in Line 6 are capitalized Do you  
17 see that?  
18 A Yes I see that  
19 Q And the words "billing contact" in Lines 9 to  
20 10 are not capitalized Do you see that?  
21 A Yes I see that  
22 Q Should the "billing contact" reference at 9  
23 and 10 be capitalized?  
24 A Yes I guess they could be capitalized  
25 Q Did you intend to refer to the same billing

1 contact in both Line 6 and Line 10?  
2 A Yes, it's a billing contact that the CLP  
3 defines so  
4 Q So it's the same person?  
5 A Yes  
6 Q And at Lines 6 to 10, you state that,  
7 "Notices, not system generated, of security deposits  
8 and suspension or termination of services shall be  
9 sent via certified mail to the individual(s) listed in  
10 the Notices provision of the General Terms and  
11 Conditions of the Agreement in addition to the CLP's  
12 designated " I suppose it says "billing contact "  
13 A Yes, that's what it says  
14 Q And we agree that you meant "designated  
15 billing contact"?  
16 A Yes  
17 Q And when would a notice not be system  
18 generated?  
19 A The notices that I'm referring to here, as we  
20 discussed earlier the suspension notice when payment  
21 is not received, and then the subsequent notice when  
22 payment that was asked for on the 15-day period of  
23 time is not received So, the notices that were --  
24 essentially would tell the CLP, "We will be  
25 terminating your services within 30 days or that -- at

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1 the end of that period of time " Those are the  
2 notices that Lines 6 through 8 refer to  
3 Q So the notices sent on the 15th day of  
4 nonpayment are not system generated?  
5 A I don't believe so  
6 Q And are these notices different than the  
7 notices you described at Lines 4 to 6 of this  
8 paragraph?  
9 A Yes That's -- we discussed earlier the  
10 ones I discussed on Lines 4 and 5 are suspension  
11 notices that are sent when payment is not received  
12 within that billing period  
13 Q Is that the first notice?  
14 A Yeah, that's the first notice  
15 Q Page 22, Lines 19 to 20, you state that "The  
16 notice is sent mechanically and BellSouth's systems  
17 only have the capability to send the notice to a  
18 single contact "  
19 A Yes That 15-day notice that we were just  
20 discussing You asked me -- the first notice  
21 Q The first notice?  
22 A Yes  
23 Q To whom would that notice be sent?  
24 A To the CLP's designated billing contact  
25 Q Is the designated billing contact the person

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1 identified in the Notice provision in the General  
2 Terms and Conditions?  
3 A I believe they're identified in Section 1 7  
4 of the Attachment 7 I think that's the reference in  
5 the language It might be a billing contact What we  
6 were discussing I think was 1 7 Suspension or  
7 Termination of Services and the procedures for  
8 suspension And that paragraph that we would -- or in  
9 the case of the CLP to define the billing contacts --  
10 or the billing contact I should say  
11 Q Would it be possible for the first notice to  
12 be sent to someone other than the billing contact?  
13 A Our systems are able to send it to one  
14 person and you define who that person is So if you  
15 want a billing contact to receive it -- since you're  
16 defining who the billing contact -- I mean, the CLPs  
17 are defining who the billing contact is -- it could be  
18 anyone in the company but only one person will  
19 receive the first automated one because it's system  
20 generated and it only has the capability to have one  
21 name The billing system has the ability to have one  
22 name where it will automatically send the notice to  
23 So, however you decide to define this -- this person  
24 It could be the CFO It could be lead attorney It  
25 could be anybody that the CLP would trust, would

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1 execute right when they receive the notices You can  
2 call them billing contact You can call them whatever  
3 you want It's one person  
4 So, that's what we're able to do today  
5 Notwithstanding that, I think we already went over my  
6 testimony and the language that if the payment's not  
7 received, then however many people you have on the  
8 General Terms and Conditions will receive notices as  
9 well  
10 Q Do you understand that Petitioners may have  
11 different employees designated to perform different  
12 roles?  
13 A I would almost expect that to be the case,  
14 yes We do  
15 Q And is it possible they would want one person  
16 to handle billing and one person to handle disputes  
17 under this agreement?  
18 A That's possible  
19 Q The person that's designated as a billing  
20 contact, would that be the person that receives all  
21 the bills from BellSouth?  
22 A If that's what you want him to be, yes I  
23 guess he could be The CLPs define who the billing  
24 contact is in this context, so it could be the person  
25 who receives all the bills

1 Q And would the first notice be sent with a  
2 bill?  
3 A I think it's a separate document -- a  
4 separate letter from a bill The bill is generated  
5 one day Thirty days later, we don't receive payment  
6 for that bill the notice is generated So in a time  
7 spectrum it would be impossible for me to send a  
8 notice at the same time I'm sending the bill  
9 Q Does that computer-generated notice get  
10 incorporated into the next bill for services that  
11 BellSouth transmits to the CLPs?  
12 A The fact that no payment was received would  
13 generate late fees potentially because it was not  
14 paid on time, so the notice would not be incorporated  
15 in the bill As I mentioned a few seconds ago, it's  
16 two different events But the next bill assuming  
17 there was no payment received, would probably show  
18 that there was no payment received and late fees were  
19 assessed if the contract such stipulates that  
20 Q Why don't BellSouth systems have the  
21 capability to send the first notice to more than one  
22 person?  
23 A I couldn't answer that question I have no  
24 idea why the system has that limitation  
25 Q Could BellSouth send that first notice to the

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1 person that is designated in the General Terms and  
2 Conditions as the recipient of notices in this  
3 agreement?  
4 A If the CLPs decided that's the person that  
5 they should send it to, it could be sent as long as  
6 one individual person -- the capability is to just  
7 send it to one person so if that's the person that  
8 the CLPs decide that they want to receive these  
9 notices, it could go to them  
10 I mean you need to tell us -- your  
11 clients need to tell us "Okay This is my person for  
12 receiving these notices," and we'll get it in our  
13 system and when one is generated, it will go to that  
14 person Notwithstanding that, I would assume that if  
15 -- like you were saying earlier in your example  
16 companies have different people handling different  
17 tasks It would be just as simple for the CLPs to  
18 have the person that they define as their "billing  
19 contact" to have a To Do When I receive notices of  
20 this type please make a photocopy and send it to  
21 however many people in the company have it, so that's  
22 a simple one also So I don't understand why that  
23 would be such a burdensome thing to do but, as you  
24 were asking if the CLP decide that the person  
25 identified in the General Terms and Conditions is the

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1 person that should receive billing notices I believe  
2 we have that capability to reassign and put that name  
3 in there so they get it

4 Q In order to avoid termination of service,  
5 when a CLEC receives a notice of suspension, there is  
6 a set time in which a CLEC must act, isn't that true?

7 A The order is generated the day after the  
8 payment was due. They have 15 days to pay or their  
9 system's access will be suspended -- terminated and  
10 from the time that that 15 days starts, there are 30  
11 days before termination occurs of the service

12 Q And if the Petitioners designate as the  
13 billing contact the same person that is designated for  
14 the Notice provision in the General Terms and  
15 Conditions, would that same person then receive all of  
16 the bills and the notices of the suspension and other  
17 notices under the Agreement?

18 A I don't know if they would receive all of the  
19 bills. They would receive all of the notices because  
20 she would have defined them as the person that should  
21 be receiving those notices

22 Q Someone else would be receiving the bills?

23 MR CULPEPPER Object to the form of  
24 the question

25 THE WITNESS I really don't know

1 questioning?

2 A Yes

3 Q And I think your testimony is it could take  
4 as long as a year. Do you remember that?

5 A Yes

6 Q Could it take less than a year?

7 A Yes

8 MR CULPEPPER I have no further  
9 questions

10 MS JOYCE Mr Morillo, you're going  
11 to be receiving a copy of the transcript and you have  
12 the right to review it and make any changes if there  
13 are any errors in the transcript, and also to sign it.  
14 You have 30 calendar days from your receipt to do  
15 that

16 THE WITNESS Okay

17 MS JOYCE Do you understand that if  
18 you fail to sign your transcript, it will be deemed  
19 official anyway and it can be admitted into a state  
20 commission hearing?

21 THE WITNESS Yes

22 MS JOYCE Thank you for your time

23 and you have a safe flight home

24 (Deposition concluded at 4:59 p.m.)

25

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1 the bills are sent to in your case

2 Q (By Ms. Joyce) I refer you to Exhibit 4,  
3 which is your November 19th testimony

4 A Okay

5 Q Page 24 Line 7

6 A Okay

7 Q It says, "The CLEC's designed billing  
8 contact "

9 A Yes

10 Q Should this also be "designated billing  
11 contact"?

12 A Yes

13 Q And the words "billing" and "contact" should  
14 be capitalized here?

15 A Yes

16 MS JOYCE I have no further  
17 questions

18 Counsel, do you have any questions?

19 MR CULPEPPER Yes, just to  
20 follow-up on Issue 99

21 EXAMINATION

22 BY MR CULPEPPER

23 Q Mr Morillo, on Issue 99, you received a lot  
24 of questions about how long it would take a commission  
25 to resolve a dispute. Do you recall that line of

1 FRR VIA SHEET

2 Case name In the matter of

3 Joint Petition New South

4 Communications for

5 Arbitration with BellSouth

6 Deponent Carlos Morillo

7 Date

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SIGNATURE

I, Carlos Morillo, do hereby state under oath that I  
have read the above and foregoing deposition in its  
entirety and that the same is a full, true and correct  
transcript of my testimony.

Signature is subject to corrections on attached errata  
sheet, if any.

\_\_\_\_\_  
Carlos Morillo

\_\_\_\_\_  
State of \_\_\_\_\_  
County of \_\_\_\_\_

Sworn to and subscribed before me this  
\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Notary Public

My commission expires \_\_\_\_\_

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